

STATE OF MICHIGAN  
MICHIGAN SUPREME COURT

TAMIKA HARRELL,  
Plaintiff-Appellee,

-vs-

TITAN INSURANCE COMPANY,  
Defendant-Appellant.

SUPREME COURT NO.:

COURT OF APPEALS NO.: 318744

LOWER COURT NO.: 12-003939-NF

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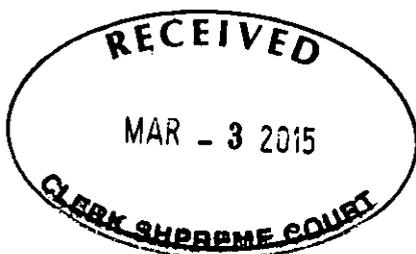
**DEFENDANT-APPELLANT TITAN INSURANCE COMPANY'S  
APPLICATION FOR LEAVE TO APPEAL**

**NOTICE OF HEARING**

**NOTICE OF FILING OF DEFENDANT-APPELLANT'S  
APPLICATION FOR LEAVE TO APPEAL**

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## STATEMENT OF ORDER BEING APPEALED AND REQUESTED RELIEF

Defendant-Appellant Titan Insurance Company (hereinafter “Defendant” or “Titan”) submits this Application for Leave to Appeal from the Court of Appeals’ Opinion and Order dated January 20, 2015, which affirmed the decision of the Wayne County Circuit Court to deny Titan’s Motion for Summary Disposition. In addition, the Court of Appeals’ Opinion and Order also affirmed the lower court’s Findings of Fact and Conclusions of Law, which were rendered following a bench trial that took place on August 21, 2013. The Circuit Court had determined that despite her “periodic” use of her husband’s uninsured motor vehicle over the course of 2½ years, Plaintiff-Appellee Tamika Harrell (hereinafter “Plaintiff” or “Harrell”) did not “have the use” of her husband’s uninsured motor vehicle for a period of time greater than 30 days. As a result, she was not considered an “owner” of the uninsured motor vehicle, pursuant to the definition of the term “owner” found in the No-Fault Act, MCL 500.3101(2)(k)(i). Therefore, she was not disqualified from receiving No-fault benefits under MCL 500.3113(b), and said benefits are now payable under the Michigan Assigned Claims Plan, which is funded by those of who do pay our auto insurance premiums. A copy of the Court of Appeals’ decision is attached to this Application for Leave to Appeal as **Exhibit 8**.

Defendant-Appellant Titan Insurance Company respectfully requests that this honorable Court grant its Application for Leave to Appeal and, after a full briefing of the issues involved in this matter, reverse the decision of the Michigan Court of Appeals and of the Wayne County Circuit Court, and remand this matter back to the Wayne County Circuit Court with instructions to enter an Order Granting Titan’s Motion for Summary Disposition.

As shown below, this case concerns whether a wife “has the use” of her husband’s uninsured motor vehicle, thereby rendering her an “owner” of the vehicle under the Michigan No-Fault Insurance Act. Put another way, this case involves a significant issue of statutory

interpretation; namely, proper interpretation and application of the definition of the term “owner” set forth in MCL 500.3101(2)(k)(i),<sup>1</sup> and the disqualification provisions set forth in MCL 500.3113(b), for those spouses, such as Plaintiff Tamika Harrell, who have “the use” of uninsured motor vehicles, titled in the name of the other spouse (in this case, Harrell’s husband, Arville Livingston) for a period of time greater than thirty days. As such, this case involves a significant question concerning the proper application of this Court’s unanimous decision in *Twichel v MIC General Ins Corp*, 469 Mich 524, 676 NW2d 616 (2004), in which this Court held:

“Nothing in the plain language of MCL 500.3101(2)(g)(i) [now MCL 500.3101(2)(k)(i)] requires (1) that a person has any time *actually used* the vehicle or (2) that the person has *commenced* using the vehicle at least 30 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 30 days.

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 30 days, that person is the ‘owner’ from the inception of the arrangement, regardless of whether a 30-day period has expired.”

*Twichel*, 696 NW2d at 620 (italics in original)

In this case, Plaintiff had extensive use of her husband’s uninsured motor vehicle, prior to her involvement in a motor vehicle accident that occurred on June 17, 2011. Even the Court of Appeals, in its erroneous decision, acknowledged Harrell’s “periodic” use of the family’s uninsured vehicle. In the 2½ years that the vehicle was in the household, Plaintiff received seven different traffic citations – all while driving her husband’s vehicle. She also used it on average of once per week, and sometimes even more, during the nearly six-month period of time from

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<sup>1</sup> PA 2014, No. 492, effective January 13, 2015, added some additional terms to be defined under the Michigan No-Fault Insurance Act, including “commercial quadricycle” and “golf cart.” As a result, the statute referred to by the lower court and the Court of Appeals, MCL 500.3101(2)(h)(i) has been reclassified as MCL 500.3101(2)(k)(i). Throughout this Application for Leave to Appeal, Defendant will be referring to the current statutory provision found at MCL 500.3101(2)(k)(i).

January 1, 2011, through June 17, 2011. She used the vehicle to travel to her place of employment, Starvin' Marvin's, where she was employed as dancer. She was driving the vehicle at the time of the accident as well. As demonstrated more fully below, the Court of Appeals erred by engrafting a thirty day "continuous" use requirement onto the statutory definition of the term "owner" set forth in MCL 500.3101(2)(k)(i). This judicial amendment of the otherwise unambiguous statutory language is, unfortunately, in keeping with earlier published decisions of the Court of Appeals, which have arguably engrafted a "regular" or "exclusive" use requirement onto the statutory definition. See *Detroit Medical Center v Titan Ins Co*, 284 Mich App 490, 775 NW2d 151 (2009), lv den'd 485 Mich 1008, 775 NW2d 755 (2009), reconsideration den'd 486 Mich 912, 781 NW2d 574 (2010).

In fact, the term "owner" as defined in the Michigan No-Fault Insurance Act, MCL 500.3101(2)(k)(i), is not restricted to those individuals having "continuous use" of a motor vehicle, "exclusive use" of a motor vehicle, or even "regular use" of a motor vehicle. Unfortunately, the Court of Appeals, in this case, judicially inserted the word "continuously" into the no-fault statutory definition of the term "owner" which simply defines that term as including:

"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."

As such, Plaintiff-Appellee Tamika Harrell clearly had a "right to use" her husband's motor vehicle by virtue of not only their marital relationship, but her actual pattern of use of the vehicle, including the seven different traffic citations that she received in 2½ years while operating said vehicle. Therefore, as the "owner" of the uninsured motor vehicle involved in the accident, Plaintiff Harrell should have been barred from recovering no-fault benefits under MCL 500.3113(b).

## STATEMENT OF QUESTION PRESENTED

Plaintiff had “periodic” use of her husband’s uninsured motor vehicle during the 2½ years that the vehicle was in the marital household. Her extensive use of the vehicle was manifested by the fact that she received seven different traffic citations during the 2½ years that the uninsured motor vehicle was in the marital household. Notwithstanding these facts, both the lower and the Court of Appeals ruled that Plaintiff is not considered an “owner” of her husband’s motor vehicle because she did not have “continuous” use of her husband’s motor vehicle, which is in keeping with earlier decisions of the Court of Appeals which have arguably engrafted a “regular” or “exclusive” use requirement into the No-Fault Insurance Act’s definition of the term “owner” found at MCL 500.3101(2)(k)(i). In fact, the plain language of MCL 500.3101(2)(k)(i) contains no such “regular,” “exclusive,” or “continuous” use requirement. Given these undisputed facts, did the Court of Appeals err when it affirmed the decision of the Wayne County Circuit Court to deny Defendant’s Motion for Summary Disposition, and later entered Judgment in favor of Plaintiff, following a bench trial, in which the lower court applied an incorrect legal standard to the facts before it?

Defendant-Appellant Titan Insurance Company contends that the answer is, “Yes.”

Plaintiff-Appellee Tamika Harrell contends that the answer is, “No.”

The Wayne County Circuit Court answered this question, “No.”

The Michigan Court of Appeals answered this question, “No.”

## STATEMENT JUSTIFYING INTERVENTION BY THIS COURT

“I respectfully dissent from this Court’s Order denying Defendant’s Motion for Reconsideration and instead would grant leave to appeal in this case and in *Spectrum v Titan Ins*, no. 140109. **These cases both raise the significant question of when a spouse or live-in companion of a registered owner of an uninsured motor vehicle will be deemed an ‘owner’ of that vehicle, notwithstanding that their name is not on the title to the vehicle.** MCL 500.3101(2)(h)(i) [now MCL 500.3101(2)(k)(i)] defines ‘owner’ to include ‘a person renting a motor vehicle or *having the use thereof*, under a lease or otherwise, for a period that is greater than thirty days. (Emphasis added) Being deemed an ‘owner’ carries significant consequences because MCL 500.3113(b) bars an owner from no-fault benefits ‘for accidental bodily injury if at the time of the accident . . . the person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the [insurance] required by [MCL 500.3101 or MCL 500.3103] was not in effect.’

\* \* \*

Defendant argued in each case that no-fault coverage was precluded because Mr. Zoerman [the injured claimant in *Spectrum Health*] and Ms. Jimenez [the injured claimant in *Detroit Medical Center v Titan*] were each an ‘owner’ pursuant to MCL 500.3101(2)(h)(i), i.e., they had ‘the use’ of the vehicle for a period greater than 30 days. The trial court and the Court of Appeals ruled to the contrary, arguing that neither of these persons enjoyed ‘regular’ or ‘exclusive’ use of the vehicle.

**I would grant leave to appeal to consider Defendant’s argument that the Court of Appeals has engrafted a ‘regular’ or ‘exclusive’ use requirement onto the statutory definition of ‘owner’, and that such requirement is nowhere found in the statute.** Rather, Defendant argues, the focus must be upon whether a person had a ‘right to use’ a vehicle. **I would also grant leave generally to assess the circumstances under which a person may avoid an ‘owner’ designation under MCL 500.3101(2)(h)(i) by the expedient of titling an uninsured vehicle in the name of a family member living in the same household. The financial implications of the questions posed in this case are considerable for all automobile policyholders in this state.”**

*Detroit Medical Center v Titan Ins Co.*, 486 Mich 912, 781 NW2d at 574-575 (Markman, J., joined by Corrigan, J., dissenting)

“A person is not an owner if the person periodically borrows a vehicle and permission to do so is not **continuous** for 30 days. *Detroit Medical Center v Titan Ins Co*, 284 Mich App 490, 492-493; 775 NW2d 151 (2009).”

*Harrell v Titan Ins Co*, Court of Appeals docket no. 318744, unpublished Opinion rel'd 1/20/2015, slip opinion at page 3.

Since Justice Markman issued his prophetic dissent in 2010, matters have become worse for the policyholders of the State of Michigan, who are forced to fund the Michigan Assigned Claims Plan (formerly known as the Michigan Assigned Claims Facility) so that the Michigan Assigned Claims Plan can pay no-fault benefits to individuals, such as Plaintiff Harrell, who undoubtedly have “periodic” use of their spouse’s uninsured motor vehicle. However, because their use of the vehicle is not “proprietary”, “possessory”, “exclusive,” “regular” or “continuous,” they are nonetheless not considered “owners” of the vehicle, despite the plain language of MCL 500.3101(2)(k)(i). This judicial amendment of the No-Fault Insurance Act actually dates back to 1998, when the Court of Appeals, in *Ardt v Titan Ins Co*, 233 Mich App 685, 593 NW2d 215 (1999) engrafted a “proprietary use” or “possessory use” requirement onto the statutory definition of the term “owner” found at MCL 500.3101 (2)(k)(i). **Defendant respectfully submits that given the facts involved in this case, the time is ripe for this Court to consider this issue, which was last addressed by this Court over ten years ago, in *Twichel, supra*, and to “assess the circumstances under which a person may avoid an ‘owner designation’ under [MCL 500.3101(2)(k)(i)] by the expedient of titling an uninsured vehicle in the name of a family member living in the same household.”**

This appeal does not involve any significant factual disputes. Rather, it involves the application of essentially undisputed facts to the law set forth in certain provisions of the No-Fault Act. Pursuant to MCR 7.302(B)(3), the issues presented in this Application for Leave to Appeal involve legal principles of major significance to this state’s no-fault jurisprudence.

This issue of who qualifies as an “owner” of an uninsured motor vehicle, titled in the name of another person (particularly family members), has arisen frequently over the past few years. Given the state’s economic climate, particularly in the mid-2000s to the early 2010s, there were more and more uninsured motor vehicles being operated upon the highways of this state, as individuals who may have lost their jobs choose to (perhaps understandably) forego paying insurance premiums for the mandatory no-fault coverages required to legally operate a vehicle in this state, in order to survive financially. As the number of uninsured motor vehicles traveling upon the highways of this state continue to increase, it is necessary for this Court to delineate which individuals, who may have “the use” of an uninsured motor vehicle titled in the name of a family member, including a spouse, should be deemed an “owner” of that uninsured motor vehicle, under MCL 500.3101 (2)(k)(i), and therefore precluded from recovering no-fault benefits under MCL 500.3113(b).

This very issue was previously before this Court on an Application for Leave to Appeal in *Detroit Medical Center/Jimenez v Titan Ins Co*, 284 Mich App 490, 775 NW2d 151 (2009). In *Detroit Medical Center*, Plaintiff provided medical services to one Maria Jimenez, who was operating an uninsured motor vehicle titled in the name of her fiancé and the father of her two children, Jose Gonzalez. Ms. Jimenez admitted that the vehicle had been in her household for approximately one month prior to the accident, during which time she put gas in the vehicle, drove it to work and used it on the weekends. It was subsequently determined that the titleholder to the vehicle, Jose Gonzalez, was actually living with Maria Jimenez at the time of the motor vehicle accident, and that he gave the vehicle to Ms. Jimenez to use because he had another vehicle available for his own use. In a published opinion, the Michigan Court of Appeals unfortunately engrafted a “regular use” or “exclusive use” requirement when, in fact, the

statutory language utilized by the legislature contains no such verbiage. **In this case, the Court of Appeals explicitly relied on the *Detroit Medical Center/Jimenez v Titan* case in support of its decision ruling that because Harrell did not have “continuous” use of the uninsured motor vehicle, titled in the name of her husband, she could not be deemed an “owner” of said vehicle.**

Titan initially filed an Application for Leave to Appeal, which was initially denied by this Court. Titan subsequently filed a Motion for Reconsideration, nearly simultaneously with an Application for Leave to Appeal in *Spectrum Health v Titan Ins Co*, Court of Appeals docket no. 285104, unpublished decision rel'd 10/20/2009; Supreme Court docket no. 140109 and in *Zoerman v Titan*, Court of Appeals docket no. 285105, unpublished decision rel'd 10/20/2009; Supreme Court docket no. 140111. On May 14, 2010, this Court issued an Order denying Titan's Motion for Reconsideration in *Detroit Medical Center/Jimenez, supra* and Titan's Application for Leave to Appeal in *Spectrum Health, supra*, and *Zoerman, supra*, over a notable dissent authored by Justice Markman, joined by former Justice Corrigan, which is excerpted above. Defendant respectfully submits that, given the significant legal issues involved in this case, it is time for this Court to consider this issue once and for all in order to delineate the universe of individuals who, while having the use of a motor vehicle, should be deemed “owners” of said motor vehicles, for purposes of the Michigan No-Fault Insurance Act.

Furthermore, pursuant to MCR 7.302(B)(5), the Court of Appeals' decision in this case conflicts with this Court's unanimous opinion in *Twichel v MIC General Ins Corp*, 469 Mich 524, 676 NW2d 616 (2004), and fails to recognize the inherent tension between this Court's decision in *Twichel* and the Court of Appeals' decision in *Ardt, supra*. In *Ardt*, the Court of Appeals focused on the injured party's **actual use** of the uninsured motor vehicle, titled in the

name of a family member, whereas this Court in *Twichel, supra*, focused upon the individual's "right to use" the other person's uninsured motor vehicle. As more fully explained below, these two decisions may very well be irreconcilable. Accordingly, the Court of Appeals' decision, which found that Plaintiff Harrell was entitled to no-fault benefits notwithstanding her "right to use" her husband's uninsured motor vehicle, by virtue of their marital relationship, completely ignores this Court's holding in *Twichel, supra*.

To recap, MCL 500.3101(2)(k)(i) does not say "having the proprietary use" of a motor vehicle for a period of time greater than thirty days. Nor does it say "having the possessory use" of a motor vehicle for a period of time that is greater than thirty days. It certainly does not read "having the exclusive use" of a motor vehicle for a period of time that is greater than thirty days or "having the regular use" of a motor vehicle for a period of time that is greater than thirty days. Finally, contrary to the Court of Appeals in this case, MCL 500.3101(2)(k)(i) does not read "having the continuous use" of a motor vehicle for a period of time that is greater than thirty days. Rather, it simply says "having the use" of the vehicle and, in the case at bar, Plaintiff certainly had use of her husband's uninsured motor vehicle for well more than thirty days. As noted below, she received seven traffic tickets during the 2½ years that the vehicle was in the household, and members of this Court, or its staff, simply need to recall how often they travel upon the highways and byways of this state without receiving a traffic citation to realize that Plaintiff was either the most unlucky person in the world (to have received a traffic ticket every time she used the vehicle), or that her use of the vehicle was, in reality, far more extensive than what she and her husband testified to at deposition, and at trial. The facts of this case are so compelling, and the findings of the trial court and the Court of Appeals are so contrary to the

plain meaning of the statutory text utilized in MCL 500.3101(2)(k)(i), that this case cries out for intervention by this Court.

## STATEMENT OF FACTS

This case involves significant issues of coverage under Michigan's No-Fault Insurance Act. At issue is whether or not a wife, who had "the use" of her husband's motor vehicle for more than thirty days (and therefore falls within the definition of the term "owner" set forth in MCL 500.3101(2)(k)(i)) and who should have been disqualified from recovering benefits under MCL 500.3113(b), is nonetheless entitled to recover benefits through the Michigan Assigned Claims Plan, funded by every single auto insurance policy holder in the State of Michigan who pays a premium. As demonstrated below, Plaintiff Harrell had extensive use of her husband's uninsured motor vehicle in the years leading up to the subject accident, which occurred on June 17, 2011. Even the Court of Appeals acknowledged that her use was "periodic." In fact, she even managed to receive no less than seven different traffic citations between 2009 and 2011, all while driving her husband's uninsured motor vehicle. Given this pattern of usage, Harrell was clearly an "owner" of her husband's uninsured motor vehicle, pursuant to the plain and unambiguous definition of the term "owner" set forth in MCL 500.3101(2)(k)(i). As the "owner" of the uninsured motor vehicle involved in the subject accident, she should have been disqualified from recovering benefits under MCL 500.3113(b). The Lower Court denied Defendant-Appellant Titan Insurance Company's Motion for Summary Disposition and, following a bench trial, ruled that Plaintiff was, in fact, entitled to recover no-fault benefits, paid for by the policy holders of this state. It is incumbent upon this Court to correct this egregious error.

The facts giving rise to this Application for Leave to Appeal are derived from the deposition testimony of Plaintiff, Tamika Harrell, attached as **Exhibit 1**, and the deposition transcript of her husband, Arville Livingston, attached as **Exhibit 2**. The underlying facts were reiterated during the bench trial that took place on August 21, 2013, before the Hon. David J.

Allen, of the Wayne County Circuit Court, and a copy of the transcript from the bench trial is attached as **Exhibit 3**.

The subject accident occurred on June 17, 2011. According to the police report, admitted as Trial Exhibit A by the Wayne County Circuit Court, Plaintiff Tamika Harrell was driving a 2008 Lincoln MKX on the Southfield Freeway, near its intersection with Tireman, when her vehicle was rear ended by another motorist. This vehicle was titled in the name of her husband, Arville Livingston. (TR 8/21/2013, pgs 6; 35.)

Although Ms. Harrell and Mr. Livingston had only been married a few months prior to the accident, Ms. Harrell and Mr. Livingston had been together for approximately thirteen years. (TR 8/21/2013, pg 41.) Since Mr. Livingston acquired the vehicle in 2008, Plaintiff Harrell had rather extensive use of that vehicle, as manifested by the numerous traffic citations that she received due to her failure to have a valid driver's license. During the bench trial, and in her deposition, she admitted to receiving a ticket in the City of Dearborn on December 19, 2008, while driving the subject vehicle. (See Trial Exhibit E; TR 8/21/2013, pgs 6-7.) She received another ticket less than two months later, on February 17, 2009, while driving her husband's vehicle in the City of Detroit. (See Trial Exhibit F; TR 8/21/2013, pgs 7-8.) She received another traffic ticket four days later, on February 12, 2009, while traveling in the City of Inkster. (See Trial Exhibit G; TR 8/21/2013, pg 9.)

One year later, on March 7, 2010, she received a citation while driving her husband's motor vehicle in the City of Detroit. (See Trial Exhibit H; TR 8/21/2013, pgs 9-10.) Four months later, on July 8, 2010, she received a traffic citation while driving her husband's motor vehicle in the City of Dearborn Heights. (See Trial Exhibit I; TR 8/21/2013, pg 11.) Less than five months later, she received yet another citation, while driving her husband's automobile in

the City of Detroit. (See Trial Exhibit J; TR 8/21/2013, pg 12.) She also received a traffic citation while driving the vehicle on the date of loss. (TR 8/21/2013, pg 13.) **In short, during the two-year period of time from February 2009 through June 2011, Plaintiff managed to receive no less than seven different traffic citations, from various jurisdictions – all while operating her husband’s 2008 Lincoln.**

Plaintiff worked as an exotic dancer at “Starvin’ Marvin’s,” now known as Club Vegas. In fact, her husband was so enamored of her that he purchased a vanity plate for the 2008 Lincoln with her stage name on it – “Misty.” (TR 8/21/2013, pg 18.) The fact that she would drive her husband’s vehicle to the nightclub is not at all surprising, even though Ms. Harrell would never tell her husband precisely where she was going. In fact, during the bench trial, her husband expressed surprise when confronted with the fact that his wife had used the vehicle, on quite a few occasions, to drive to her place of employment. As stated by Ms. Harrell, during the bench trial that took on August 21, 2013:

“Witness. He didn’t like for me to drive because I didn’t have license, so I would have to sort of convince him to allow me to drive.

\* \* \*

Q. You testified, but I just have a way to dissuade him?

A. Oh, dissuade, oh. I meant persuade him.

Q. Okay.

A. That’s it. Sometimes I know he would kind of be tired and, you know, I have my ways to get my husband to do things for me.

\* \* \*

A. But like I said, there were some times when I absolutely needed the car and I had my way to just say, you know, can I go, I’ll be right back and, you know, things like that.

You know, I don’t want to just sit here and keep going on and on about it, but --

I mean I'm sure you guys have a wife and I'm sure you know how we can make things happen some time."

(TR 8/21/2013, pgs 16-18.)

Ms. Harrell also admitted that she had far more access to her husband's vehicle than she had to any other vehicles that may have been owned by friends. (TR 8/21/2013, pgs 19-20.) Furthermore, both she and her husband acknowledged that, with regard to her actual use of the vehicle between January 1, 2011, and June 17, 2011, she used it on average of once per week and sometimes even more, and they both acknowledged that she had used the vehicle for at least 24 days, and possibly more from January 1, 2011, through June 17, 2011. (TR 8/21/2013, pgs 20; 48.)

Arville Livingston likewise testified that he was fully aware of all of the tickets that his wife received while driving his automobile. (TR 8/21/2013, pg 41.) Even though she did not have a valid driver's license, he nonetheless allowed her to continue driving the vehicle. (TR 8/21/2013, pg 43.) Both Plaintiff and her husband likewise acknowledged that even after the subject loss occurred, she would still drive the subject vehicle. (TR 8/21/2013, pg 28.) Even though there was only one set of keys to the vehicle, there was never an occasion where permission was denied, and the denial stuck. Instead, Plaintiff always managed to find a way to use the vehicle as needed.

As discussed more fully below, MCL 500.3101(2)(k)(i) defines the term "owner" in the following manner:

"'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."

Note that there is no requirement that an individual have "regular" use of that vehicle. There is no requirement that an individual have "exclusive" use of that vehicle before one is considered

an “owner” of that vehicle. There is no requirement that the use be “continuous,” contrary to the holding of the Court of Appeals in the case at bar. All that is required is that one have “the use” of that vehicle for more than thirty days. If a person is the “owner” of an uninsured motor vehicle, which is involved in an accident, that person is disqualified from recovering no-fault benefits pursuant to MCL 500.3113(b), which 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:

\* \* \*

- (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.”

Because Plaintiff fits the definition of the term “owner” set forth in MCL 500.3101(2)(k)(i), she should have been disqualified from recovering no-fault benefits.

Because Plaintiff did not have a policy of insurance available to her in her household, she filed a claim for no-fault benefits with the Michigan Assigned Claims Facility, now known as the Michigan Assigned Claims Plan.<sup>2</sup> The application was filed with the Michigan Assigned Claims Facility on August 12, 2011. (See Trial Exhibit B.) The Michigan Assigned Claims Facility, in turn, assigned the claim to Defendant Titan on August 22, 2011. (See Trial Exhibit C.) Titan assigned an investigator from Data Surveys to conduct an investigation into Plaintiff’s use of her husband’s uninsured motor vehicle (which, once again, bore Plaintiff’s stage name “Misty” as the vanity license plate), and the Data Surveys’ reports dated September 26, 2011, and October 3, 2011, were admitted as Trial Exhibit D. After verifying Plaintiff’s fairly extensive use of her

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<sup>2</sup> The responsibility for administering assigned claims under the Michigan No-Fault Insurance Act was transferred from the Michigan Secretary of State’s Office to the Michigan Automobile Insurance Placement Facility (MAIPF) effective January 1, 2013. The Michigan Assigned Claims Facility is now known as the Michigan Assigned Claims Plan. See PA 2012, No. 204.

husband's motor vehicle, manifested by the fact that she received no less than seven separate traffic citations during the 2½ year period preceding the date of loss, Defendant Titan denied coverage for this loss, on the basis that as an "owner" of her husband's uninsured motor vehicle under MCL 500.3101(2)(k)(i), she was disqualified from recovering benefits under MCL 500.3113(b).

## PROCEDURAL HISTORY

After Titan denied Plaintiff's claim for no-fault benefits, Plaintiff commenced litigation in the Wayne County Circuit Court. The lawsuit was assigned docket number 2012-003939-NF. Suit was filed on March 21, 2012. Responsive pleadings were timely filed by Titan on May 11, 2012.

Following the close of discovery, Titan filed a Motion for Summary Disposition with the Wayne County Circuit Court on February 25, 2013. In its motion, Titan referenced Plaintiff's extensive use of the subject vehicle, as manifested by the numerous traffic citations that she received, referenced above. Plaintiff filed her Answer to Titan's Motion for Summary Disposition on March 22, 2013. Oral argument on the motion took place on Friday, March 29, 2013, and a copy of the transcript from that hearing is attached as **Exhibit 4**. During oral argument Titan made reference to the Court of Appeals' unpublished decision in *Vucinaj v Amerisure Ins Co*, docket no. 264933, unpublished decision rel'd 3/21/2006, which, Titan submits, is factually on all fours with the facts and circumstances involved in this case.<sup>3</sup> The *Vucinaj* decision is attached as **Exhibit 5** and, as noted therein, the Court of Appeals ruled that, even though Plaintiff had only used her husband's uninsured motor vehicle on ten occasions during the 2½ year period that the vehicle was in the household, she was nonetheless disqualified from recovering no fault benefits, as the statutory or constructive "owner" of her husband's uninsured motor vehicle pursuant to MCL 500.3113(b). In any event, following oral argument, the Wayne County Circuit Court denied Titan's Motion for Summary Disposition, finding that there existed a genuine issue of material fact regarding Plaintiff's "ownership" of the subject

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<sup>3</sup> This Court's decision in *Vucinaj* was erroneously transcribed by the court reporter as "Buccinai."

motor vehicle. Unfortunately, no Order to that effect was ever entered by the Wayne County Circuit Court.

The parties later submitted the issue of damages to an arbitration panel and proceeded to a bench trial on the sole issue of whether or not Plaintiff was an “owner” of the uninsured motor vehicle, titled in the name of her husband, and would therefore be disqualified from recovering no-fault benefits under these circumstances. Again, the bench trial took place on August 21, 2013, and the transcript from that hearing is again attached as **Exhibit 3**. Following the bench trial, the Court indicated that it would take the matter under advisement and issue the appropriate rulings.

On September 9, 2013, Judge Allen issued Findings of Facts and Conclusions of Law. In his Findings of Facts, Judge Allen concluded that Plaintiff did not qualify as an “owner” of her husband’s uninsured motor vehicle, as that term is defined in MCL 500.3101(2)(k)(i). Accordingly, Judge Allen concluded, as a matter of law, that Plaintiff was not disqualified from recovering benefits under MCL 500.3113(b), as applied to assigned claims insurers pursuant to MCL 500.3173. Judge Allen’s Findings of Facts and Conclusions of Law are attached as **Exhibit 6**. As Judge Allen’s Findings of Facts and Conclusions of Law resolved all of the issues between the parties, the appropriate Order for Dismissal was entered by Judge Allen on October 7, 2013. See **Exhibit 7**. On October 18, 2013, Defendant Titan Insurance Company timely filed its Claim of Appeal as of Right with the Court of Appeals.

Following full briefing and oral argument, the Michigan Court of Appeals issued its unpublished Opinion in this matter on January 20, 2015, and a copy of the Court’s Opinion and Order, affirming the decision of the court below, is attached as **Exhibit 8**. In its decision, the Court of Appeals set forth an incorrect statement of the law and, in doing so, engrafted a

“continuous use” requirement onto MCL 500.3101(2)(k)(i). Citing the Court of Appeals’ decision in *Detroit Medical Center, supra* which, as Justice Markman noted in his dissent, arguably engrafted a “regular” or “exclusive” use requirement onto the statutory language of MCL 500.3101(2)(k)(i), the Court of Appeals went on to note that:

“A person is not an owner if a person periodically borrows a vehicle and permission to do so it not continuous for thirty days.”

*Harrell v Titan*, slip opinion at page 3.

Of course, there is no such statutory requirement that a person have thirty days of continuous use of the vehicle before he or she will be deemed an “owner” of same. There is no statutory requirement that a person have “regular” use of the vehicle, or that a person have “exclusive” use of the vehicle, contrary to the holding in *Detroit Medical Center, supra*. Having set up this incorrect legal standard, the Court of Appeals erroneously concluded that there existed a question of fact regarding Ms. Harrell’s use of her husband’s uninsured motor vehicle. Therefore, the Court of Appeals erroneously ruled that the lower court had properly denied Titan’s Motion for Summary Disposition.

Turning its attention to the bench trial that took place on August 21, 2013, and the Findings of Fact and Conclusions of Law that followed after that, the Court of Appeals simply affirmed the lower court’s decision because Plaintiff’s “use of the vehicle did not comport with concepts of ownership.” Therefore, the findings of the court below were not clearly erroneous. This decision defies common sense and is at odds with the actual statutory language. As a result, it is incumbent upon this Court to correct this error and apply the clear and unambiguous statutory language in the way intended by the legislature when it added this provision back in 1988. It is incumbent upon this Court to effectuate the Legislature’s intent to broaden the class of individuals who could be deemed “owners” of motor vehicles under the Michigan No-Fault

Insurance Act, and therefore bar such individuals from recovering No-fault benefits due to their use of an uninsured motor vehicle pursuant to MCL 500.3113(b).

## LEGAL ARGUMENT

### I. STANDARD OF REVIEW

In this appeal, Titan is challenging the lower court's decision to deny its Motion for Summary Disposition, as affirmed by the Court of Appeals. As previously noted, the lower court denied Defendant's Motion for Summary Disposition in a ruling from the bench on March 29, 2013. However, it does not appear that the appropriate Order was ever entered. An appellate court reviews *de novo* a trial court's decision on a Motion for Summary Disposition. *Shepherd Montessori Center of Milan v Ann Arbor Charter Twp*, 486 Mich 311, 783 NW 2d 695 (2010). Furthermore, issues of statutory construction and interpretation, such as the proper interpretation and application of the definition of the term "owner" set forth in the No-Fault Insurance Act, MCL 500.3101(2)(k)(i), are likewise questions of law that this Court reviews *de novo*. *Eggleston v Bio-Med Applications of Detroit Inc*, 468 Mich 29, 628 NW 2d 139 (2003).

Titan also challenges the lower court's Findings of Facts and Conclusions of Law entered by the lower court on September 9, 2013, as again affirmed by the Court of Appeals. The lower court's Findings of Facts are reviewed utilizing a "clear error" standard of review. A Finding of Fact is clearly erroneous if there is no evidence to support the factual findings or, in the alternative, there is evidence to support them but the appellate court is left with a definite and firm conviction that a mistake has been made. *Sands Appliances Services v Wilson*, 463 Mich 231, 615 NW 2d 241 (2000); *Killips v Mannisto*, 244 Mich App 256, 624 NW 2d 224 (2001). However, with regard to any Conclusions of Law that are made by the trial court, flowing from the Findings of Fact, those decisions are reviewed *de novo*. *Sands, supra*.

II. THE LOWER COURT ERRED WHEN IT DENIED TITAN'S MOTION FOR SUMMARY DISPOSITION AND DETERMINED THAT PLAINTIFF MAY BE ENTITLED TO RECOVER NO-FAULT BENEFITS WHERE PLAINTIFF TAMIKA HARRELL, WAS INJURED IN A MOTOR VEHICLE ACCIDENT WHILE DRIVING THE UNINSURED FAMILY VEHICLE TITLED IN THE NAME OF HER HUSBAND, CONTRARY TO THE PROVISIONS OF MCL 500.3101(2)(k)(i), MCL 500.3113(b), (AS APPLIED TO CLAIMS ARISING UNDER THE MICHIGAN ASSIGNED CLAIMS PLAN, MCL 500.3173), AND THIS COURT'S DECISION IN TWICHEL V MIC GENERAL INS. CORP., 469 MICH 524, 676 NW 2d 616 (2004)

For fifteen years, from 1973 to 1988, the Michigan No-Fault Insurance Act did not provide a definition of the term "owner." Therefore, when Courts were called upon to determine who would be considered an "owner" of an uninsured motor vehicle involved in a motor vehicle accident (and therefore disqualified from recovering no-fault benefits pursuant to MCL 500.3113(b)), Courts would, by necessity, turn to the definition of the term "owner" set forth in the Michigan Vehicle Code, MCL 257.37. This statute, as it existed prior to its amendment in 1988, provided that:

"Owner means:

- (a) Any person, firm, association or corporation renting a motor vehicle or having the **exclusive** use therefor, under a lease or otherwise, for a period of greater than 30 days.
- (b) A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner."

In *Laskowski v State Farm*, 171 Mich App 317, 429 NW 2d 887 (1988), the Court of Appeals was called upon to apply the Michigan Vehicle Code definition of the term "owner" to a case involving an uninsured motor vehicle not titled in the name of the operator. In *Laskowski*, Plaintiff had entered into an agreement to purchase a catering business, which included a 1982

GMC van. Plaintiff made a down payment for the business and the van, and was scheduled to make monthly payments for three years. During the period of time that the purchase agreement was in effect, the sellers were to maintain the Certificate of Title in their name. Shortly after purchasing the business, Plaintiff had exclusive use of the van. However, neither Plaintiff nor the sellers obtained no-fault insurance on the van. Two and a half years after purchasing the van, Plaintiff was injured in a motor vehicle accident. State Farm (the insurer of a non-involved motor vehicle owned by Plaintiff) denied the claim on the basis that Plaintiff was the “owner” of the uninsured motor vehicle involved in the accident, because she had exclusive use of the vehicle for a period of time greater than thirty days. Therefore, as an “owner” of the uninsured motor vehicle, as that term was defined in MCL 257.37, Plaintiff was disqualified from recovering no-fault benefits under MCL 500.3113(b). The lower court granted State Farm’s Motion for Summary Disposition and Plaintiff appealed.

On Appeal, the Court of Appeals affirmed the decision of the lower court, noting that:

“Plaintiff fails to realize that the Legislature also expressly provided that an owner or registrant of an uninsured vehicle involved in an accident is not entitled to PIP benefits. MCL 500.3113(b). Moreover, we cannot believe that the Legislature would have intended that Plaintiff, who had exclusive use of the van for 2½ years, should recover PIP benefits because she properly insured another vehicle. While Plaintiff did not have the title to the van, she had exclusive use of it for a period in excess of 30 days, albeit under a void contract and, therefore, we agree with the Trial Court that she was the owner of an uninsured motor vehicle involved in the accident and was not entitled to PIP benefits.”

*Id.*, 429 NW 2d at 890.

*Laskowski* is one of the first cases to hold that as a matter of law, someone other than the holder of legal title to a vehicle can be disqualified from recovering no-fault benefits under MCL 500.3113(b).

In 1988, the Michigan Legislature passed PA 1988, No. 126, which added the definitions of the terms “owner” and “registrant” to the Michigan No-Fault Insurance Act. At the same time, it also passed PA 1988, No. 125, which amended the definition of the term “owner” set forth in the Michigan Vehicle Code. These two statutes were tie barred and both became effective on May 23, 1988. **When one compares and contrasts these two statutes, it becomes readily apparent that the Legislature intended to broaden a class of individuals who could be deemed “owners” of motor vehicles under the Michigan No-Fault Insurance Act.** The broadened class of individuals who could potentially be deemed an “owner” of a motor vehicle was apparently an effort by the Legislature to emphasize the mandatory nature of no-fault insurance in this state and to preclude recovery of no-fault benefits for those individuals “having the use” of an uninsured motor vehicle for more than thirty days, even though they are not the title holder of the vehicle.

In its present form, Section 3101(2)(k) of the No-Fault Act, MCL 500.3101(2)(k), defines the term “owner” as including:

- “(k) ‘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.”

In its present form, Section 37 of the Michigan Vehicle Code, MCL 257.37, defines the term “owner” as:

“Owner’ means any of the following:

- (a) Any person, firm, association or corporation renting a motor vehicle or **having the exclusive use** thereof, under a lease or otherwise, for a period that is greater than 30 days.
- (b) Except as otherwise provided in §401a, a person who holds the legal title of a vehicle.
- (c) A person who has the immediate right of possession of a vehicle under an installment sale contract.”

A close analysis of MCL 500.3101(2)(k)(i) and MCL 257.37(a) reveals that these two statutory sections are almost identical. **There is one important distinction – the Michigan Vehicle Code limits the definition of the term “owner” to those individuals who have “exclusive use” of a motor vehicle. The No-Fault Insurance Act does not!**

If we were operating under the Michigan Vehicle Code definition of the term “owner,” Titan would readily concede that Plaintiff would not qualify as an “owner” of her husband’s uninsured motor vehicle as she did not have “exclusive use” of the motor vehicle. However, we are not dealing with definition of the term “owner” set forth in MCL 257.37(a). Rather, we are dealing with the definition of the term “owner” set forth in the Michigan No-Fault Insurance Act, MCL 500.3101(2)(k)(i), which does not contain any limitation on one’s use of a motor vehicle, except that the person must either use the vehicle or have the right to use the vehicle for more than thirty days.

One of the first decisions to discuss the statutory definition of the term “owner,” set forth in the No-Fault Insurance Act, MCL 500.3101(2)(k)(i) was *Ardt v Titan Insurance Company*, 233 Mich App 685, 593 NW 2d 215 (1999). In *Ardt*, the Court of Appeals held that in order to determine whether or not a person could be considered an “owner” of a motor vehicle under the definition of the term “owner” set forth in the No-Fault Act, the individual must have used the vehicle in ways that comport with concepts of ownership. The Court of Appeals indicated that

the extent of the use must be “proprietary or possessory usage, as opposed to merely incidental usage under the direction or with the permission of another.” *Id.*, 593 NW 2d at 218. The specific factual dispute in *Ardt* included an allegation by Mr. Ardt’s girlfriend that Mr. Ardt had been using his mother’s uninsured vehicle on a regular basis for approximately ninety days prior to the accident. By contrast, Mr. Ardt’s mother executed an affidavit which indicated that her son only used the vehicle sporadically. Although Titan Insurance Company was granted summary disposition by the trial court, the Court of Appeals subsequently ruled that due to the conflicting evidence presented regarding Robert Ardt’s **actual use** of his mother’s motor vehicle, the issue of whether or not Robert Ardt would be considered an “owner” of the vehicle, **based on his actual use of the vehicle**, was an issue to be resolved by the trier of fact. **As indicated below, this line of reasoning has been partially overruled by a subsequent decision of this Court, Twichel, supra.** Under *Twichel*, all that is necessary is that an individual have a **right to use** the vehicle in question. In the case at bar, Plaintiff had a “right to use” her husband’s uninsured 2008 Lincoln by operation of law, by virtue of the marital relationship, even though her **actual use** of the uninsured vehicle, as evidenced in the self-serving testimony of her and her husband may have been only “periodic.” Of course, given the fact that Plaintiff received no less than seven separate traffic citations between December 2008 and June 2011, a reasonable inference can be drawn that Plaintiff had been using the vehicle on far more occasions when she did not receive any traffic citations. Stated otherwise, a reasonable inference can be drawn that by virtue of the number of traffic citations that she received in 2½ years, her use of that vehicle was probably not so “periodic” but rather extensive.

This Court took issue with the *Ardt* analysis when it released its decision in *Twichel v MIC General Ins. Corp.*, 469 Mich 524, 676 NW2d 616 (2004). In *Twichel*, Plaintiff’s decedent

was operating a 1988 GMC pick-up truck which he had purchased five days earlier from a friend. The decedent made a partial payment and took possession of the vehicle, but the title was never signed over. The vehicle itself was uninsured. At the time of the accident, the decedent was living with his grandfather, who owned a number of vehicles insured by Defendant, MIC General Insurance. On Cross-Motions for Summary Disposition, both the Genesee County Circuit Court and the Court of Appeals ruled that Plaintiff's dependents were entitled to recover no-fault benefits as the decedent did not have actual use of the uninsured motor vehicle for more than thirty days. In so ruling, the Court of Appeals interpreted *Ardt, supra* and *Chop v Zielinski*, 244 Mich App 677, 624 NW2d 539 (2001) to hold that a person must actually have had use of the vehicle for thirty days or more before he or she would be considered an "owner" of the vehicle.

On appeal, this Court **reversed** the decision of the Court of Appeals. In doing so, this Court examined the unambiguous statutory language set forth in MCL 500.3101(2)(g)(i) (now MCL 500.3101(2)(h)(i)) and noted:

"Once again, MCL 500.3101(2)(g)(i) [now MCL 500.3101(2)(k)(i)] defines 'owner' as 'a person renting a motor vehicle or *having the use thereof* . . . for a period that is greater than thirty days.' (Emphasis added) Reading this language in the manner suggested by Plaintiff requires substitution of the phrase 'having *used* the vehicle' for the phrase 'having the use thereof.'

Nothing the plain language of MCL 500.3101(2)(g)(i) [now MCL 500.3101(2)(k)(i)] requires (1) that a person has any at 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.

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."

*Twichel*, 676 NW2d at 620 (emphasis in original).

Given this analysis, this Court moved away from the “proprietary or possessory usage” standard set forth by the Court of Appeals in *Ardt*, *supra*. Instead, it held that so long as a vehicle was available for the use of the injured Plaintiff, the Plaintiff would be considered an “owner” of the vehicle. However, in this case presently before this Court, there is not only “actual use” of the motor vehicle for more than thirty days (indeed, the vehicle had been in the household for three years before the accident), but also “right to use” the vehicle by virtue of the marital relationship between Plaintiff Harrell and her husband.

The one case, which is directly applicable to the facts in this case, is the Court of Appeals’ decision in *Vucinaj v Amerisure*, docket no. 264933, rel’d March 21, 2006. A copy of this unpublished decision is attached as **Exhibit 5**. In *Vucinaj*, the Plaintiff was driving an uninsured vehicle, which was owned and registered in the name of her husband. The vehicle had been in the household for approximately 2½ years. During this time, Plaintiff had only used the uninsured vehicle on eight to ten occasions. As a result of her injuries, Plaintiff filed a claim for no-fault benefits with the Michigan Assigned Claims Facility which, in turn, assigned the matter to Amerisure. Amerisure denied the claim, based on its contention that Plaintiff was the “owner” of her husband’s uninsured vehicle, and was therefore disqualified from recovering no-fault benefits pursuant to MCL 500.3113(b). The trial court granted summary disposition in favor of Amerisure and Plaintiff appealed.

In affirming the trial court’s decision, the Court of Appeals noted:

“In *Twichel*, *supra*, at 530, our Supreme Court addressed the definition of ‘owner’ set out in section 3101(2)(g)(i), rejecting this court’s determination, based in part on *Ardt v Titan Insurance Company*, 233 Mich App 685, 593 NW2d 215 (1999), that the person in question must actually have had use of a vehicle for 30 days or more in order to qualify as an ‘owner’ of that vehicle. Rather, the court held that ‘the focus must be on the nature of the

person's right to use the vehicle.' *Id.* The court further noted that reading the language of section 3101(2)(g)(i) to require actual use of a vehicle for a thirty day period would 'require substitution of the phrase 'having *used*' the vehicle' for the phrase 'having the use thereof.'

We conclude that *Twichel* requires affirmance of the trial court's grant of summary disposition in favor of Defendant. The clear import of *Twichel* is that a person need not have *actually* used a vehicle for a thirty day period in order to qualify as an 'owner.' Rather, what matters is the person's *right* to use the vehicle for a thirty day period. Plaintiff has failed to produce any evidence whatsoever to establish an issue of fact concerning her *right* to use the vehicle, notwithstanding her *actual* limited use of the vehicle. The undisputed testimony establishes that Plaintiff had every 'right' to use her husband's Jeep for a period extending well beyond thirty days. Plaintiff had driven the Jeep on several occasions. Although Vaselj was the sole registered owner and primary driver of the Jeep, he acknowledged that a second key to the Jeep was accessible to Plaintiff whenever she needed to use it. The fact that Plaintiff did not *actually* use the vehicle on a 'regular' basis for a thirty day period is simply irrelevant under *Twichel*."

*Vucinaj*, slip opinion at p 2 (emphasis added).

Thus, after this Court's decision in *Twichel, supra*, the proper focus has moved away from the proprietary or possessory usage standard enunciated in *Ardt, supra*. Now, a reviewing court must focus on whether or not the person actually used the vehicle for more than thirty days or the vehicle was simply available for the injured person's use. If the uninsured motor vehicle was available for the injured person's use, that person is disqualified from recovering no-fault benefits, regardless of whether he or she actually used the vehicle, or the extent of such usage.

Throughout this litigation, Plaintiff has consistently argued that because she did not use the family's uninsured motor vehicle in a "possessory" or "proprietary" manner, as those terms were enunciated by the Court of Appeals in *Ardt, supra*, she cannot be deemed an "owner" of her husband's uninsured motor vehicle. Again, Titan respectfully submits that the "proprietary or possessory" standard enunciated by the Court of Appeals in *Ardt, supra* has been rejected by this Court in *Twichel, supra*, wherein this Court focused on a person's "right to use" a particular

motor vehicle. There is nothing in the No-Fault Insurance Act that requires a “regular pattern of unsupervised usage.” Indeed, the Court of Appeals rejected such an argument in *Vucinaj, supra* where there certainly was no “regular pattern of unsupervised usage,” in a situation where one spouse used the other spouse’s uninsured motor vehicle on eight to ten occasions during a 2½ year period of time. Titan respectfully submits that the “possessory or proprietary usage” standard, enunciated in *Ardt, supra*, is inconsistent with the clear and unambiguous statutory language utilized in the No-Fault Insurance Act in MCL 500.3101(2)(k)(i), as observed by the Court of Appeals in *Vucinaj, supra*.

At this point, a brief review of this Court’s recent jurisprudence regarding statutory construction is in order. This Court has made it abundantly clear that the starting point for any analysis of a statute is the statutory language itself. In *Robinson v City of Detroit*, 462 Mich 439, 613 NW2d 307 (2000), this Court clarified the standards to be applied when interpreting the language of a particular statute:

“Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself. *Carr v General Motors Corp.*, 423 Mich 313, 317, 319 NW 2d 686 (1986). Each word of a statute is presumed to be used for a purpose and, as far as possible, effect must be given to every clause and sentence. *University of Michigan Board of Regents v University of Michigan v Auditor General*, 167 Mich 444, 450, 132 NW 1037 (1911). The Court may not assume that the Legislature inadvertently made use of one word of phrase instead of another. *Detroit v Redford Township*, 253 Mich 453, 456, 235 NW 217 (1931). Where the language of the statute is clear and unambiguous, the Court must follow it. *City of Lansing v Lansing Township*, 356 Mich 641, 649, 97 NW 2d 804 (1959.)”

*Robinson*, 613 NW 2d at 317-318.

Words that are not defined by statute will be given their plain and ordinary meanings and a Court may consult dictionary definitions when ascertaining such a meaning. *Stocker v Tri-Mount Bay*

*Harbor Building Company Inc*, 468 Mich 194, 706 NW 2d 878 (2005); *Griffith v State Farm*, 472 Mich 521, 697 NW 2d 895 (2005). If the language is clear and unambiguous, the statute must be enforced as written, as the Court must presume that the Legislature intended the meaning as expressed. *Elezovic v Ford Motor Company*, 472 Mich 408, 697 NW 2d 851 (2005). Under these circumstances, judicial construction or interpretation of the statutory provision is simply not permitted. *Brans v Extrom*, 266 Mich App 216, 701 NW 2d 163 (2005). Certainly, it is improper for a court to read words that were not there into a statute, or to read words that were there out of a statute. See *Rowland v Washtenaw County Road Com*, 477 Mich 197, 226; 731 NW2d 41 (2007) (Markman, J. concurring).

In this case, the focus must be on the phrase “having the use” and in particular the word “use.” In *Ardt, supra*, the Court of Appeals defined the phrase “having the use” of a motor vehicle as “using the vehicle in ways that comport with concepts of ownership;” i.e., proprietary or possessory usage. *Ardt*, 593 NW2d at 718. However, if one examines the dictionary definition of the term “use” it is readily apparent that one need not have “possessory or proprietary” use of something before one can “use” it. *Webster’s II New College Dictionary* defines the term “use” as follows:

- “1. To bring or put into service or action;
2. To put to some purpose: avail oneself of;
3. To conduct oneself toward;
4. To exploit for one’s own advantage or gain;
5. To take or partake of regularly as tobacco, alcohol or drugs.”

Did Plaintiff Harrell “bring or put into service” her husband’s uninsured motor vehicle? Of course she did, on many occasions, just as Plaintiff did in *Vucinaj, supra*. Did she “put to some purpose” or “avail [herself] of” her husband’s uninsured motor vehicle? Of course she did, just as Plaintiff did in *Vucinaj, supra*. Recall, also, that Plaintiff Harrell was actually driving the

vehicle when the accident occurred, and was not merely a passenger. Clearly, Plaintiff had the use of the family's uninsured motor vehicle for a period of time greater than thirty days, whether measured by actual use or a right to use. Therefore, when applying the dictionary definition of the term "use," it is clear that she has satisfied the statutory prerequisites to be deemed an "owner" of her husband's uninsured motor vehicle. To the extent that the Court of Appeals in *Ardt, supra* engrafted the "possessory or proprietary" analysis to the term "use," the Court in *Detroit Medical Center, supra*, engrafted a "regular" or "exclusive" use requirement, or the Court of Appeals in this case engrafted a "continuous" use requirement, Defendant respectfully submits that such an analysis was inconsistent with today's Supreme Court jurisprudence.

It bears repeating that even limited use of a motor vehicle will qualify the user as an "owner" of the vehicle and, of course, we are certainly dealing with more than "limited use" of the family's uninsured vehicle by Plaintiff. Again, after *Twichel, supra*, the number of times that Plaintiff actually used the family vehicle, titled in the name of her husband, has some bearing on the issue of whether or not she is a statutory "owner" of the vehicle, but is certainly not conclusive. If the arrangement under which the person has use of the vehicle is such that the right to use the vehicle will extend beyond thirty days, that person must be deemed the "owner" of the vehicle. In this case, even though Plaintiff and her husband had only been married for a few months before the accident, they had been together for thirteen years, and the uninsured family vehicle was in the household for approximately 2½ years before the subject loss occurred.

To reiterate, this Court in *Twichel, supra*, indicated that those individuals who have a "right to use" a motor vehicle for a period of time greater than thirty days will be deemed an "owner" of said vehicle. The next logical step in the analysis, of course, is to determine precisely those individuals who have a "right to use" another person's motor vehicle. Defendant

asserts that by simply applying the dictionary definition of the term “use,” the Legislature’s intent to broaden the class of individual’s who could be deemed “owners” of motor vehicles can be effectuated. However, in *Ardt, supra*, the Court of Appeals seemed concerned with an overly broad construction of the phrase “having the use” because it might render “all members of a carpool owners of the vehicle.” *Ardt*, 593 NW2d at 218, n. 1. As an alternative to the “judicial legislation” that has occurred by engrafting the words “proprietary,” “possessory,” “regular,” “exclusive” or “continuous” onto the statutory text of MCL 500.3101(2)(k)(i), the Owner’s Liability Act, MCL 257.401, provides a useful starting point for determining individuals who should be presumed to have a “right to use” another’s vehicle, and would potentially qualify as an “owner” of same. This section of the Motor Vehicle Code provides, in pertinent part:

“The operator of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle, whether the negligence consists of a violation of a statute of the statute or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. **It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family.**”

This list of individuals provides a useful starting point to determine those individuals who have a “right to use” a motor vehicle, **by operation of law**, from those who do not. It is significant to note that in *Vucinaj, supra*, counsel for Amerisure Insurance Company relied upon the Owner’s Liability Act in its Brief on Appeal, which, as noted above, is factually on all fours with the circumstances of this case. A copy of Amerisure’s Brief on Appeal in *Vucinaj, supra*, is attached hereto as **Exhibit 9** to Titan’s Application for Leave to Appeal.

By reading the Owner’s Liability Act *in pari materia* with the No-Fault Insurance Act, it becomes easy to see why innocent members of a carpool occupying an uninsured motor vehicle,

an employee who drives an uninsured employer furnished vehicle, or an attorney driving a non-resident parent's vehicle or a non-resident brother's vehicle, would not be considered among those individuals who have "the use" of a motor vehicle, as that term is used in MCL 500.3101(2)(k)(i). Because these individuals would not typically fall within any of the categories referenced in the Owner's Liability Act, which is designed to apply to household family members, they typically would not have a "right to use" another person's automobile.

As argued by counsel for Amerisure in *Vucinaj, supra*, and implicitly recognized by the Court of Appeals in that case, there is a significant problem with providing no-fault insurance coverage for family members who are driving another family member's uninsured motor vehicle. In almost any case involving an uninsured vehicle in the household of immediate family members, the injured party, as well as the title holder of the vehicle, will invariably testify that the actual use of the family vehicle was infrequent, and that they had no idea that the motor vehicle itself was uninsured. Alternatively, after being "educated" by counsel, they will invariably testify that use of the vehicle was "restricted," access was "limited" or that permission to use the vehicle was frequently "denied" by the titled owner of the vehicle. The fact of the matter is that most people do not pay attention to the vehicles that their neighbors are driving, which makes it virtually impossible to refute the self-serving testimony of Plaintiff and her husband in this case. Therefore, in order to give effect to what the Legislature intended when it deliberately omitted the phrase "exclusive use" from the No-Fault Insurance Act's definition of the term "owner," it was important to understand the class of individuals whose "right to use" a motor vehicle arises **by operation of law**. Such individuals would include resident spouses, such as Mr. and Mrs. Vucinaj in *Vucinaj, supra* and, in this case, Plaintiff Tamika Harrell and her husband, Arville Livingston.

Again, to recap, the evidence presented above clearly indicates that Plaintiff had a “right to use” the family vehicle in her mind, as manifested by the fact that she regularly drove the vehicle to the nightclub where she worked as an exotic dancer without her husband’s explicit knowledge. Plaintiff also had extensive “actual use” of the vehicle, as evidenced by the multiple traffic tickets she has received while driving her husband’s vehicle. **Plaintiff Harrell cannot escape the fact that she was actually driving the vehicle on the day of the accident as well.**

Given the authorities cited above, Plaintiff Harrell must be considered a statutory “owner” of the uninsured motor vehicle, titled in the name of her husband, and would, therefore, be precluded from recovering no-fault benefits pursuant to MCL 500.3113(b) and MCL 500.3173. The lower court erred when it refused to grant Defendant-Appellant’s Motion for Summary Disposition, and the Court of Appeals compounded this error when it affirmed the lower court’s decision on this issue. **Since all parties rely upon the same set of facts, which did not differ in any material respects at Trial, the issue involves application of those facts to the statutory language set forth in MCL 500.3101(2)(k)(i). In this respect, issues of statutory interpretation and its application to undisputed facts are issues of law, not of fact.**

**III. IN ITS FINDINGS OF FACTS AND CONCLUSIONS OF LAW, THE LOWER COURT FAILED TO CONSIDER THAT UNDER THE TOTALITY OF THE CIRCUMSTANCES, PLAINTIFF CLEARLY HAD THE USE OF HER HUSBAND'S UNINSURED MOTOR VEHICLE FOR A PERIOD OF TIME GREATER THAN THIRTY DAYS, AS REQUIRED UNDER MCL 500.3101(2)(k)(i), THEREBY LEADING THE COURT TO THE ERRONEOUS CONCLUSION OF LAW, TO THE EFFECT THAT PLAINTIFF WAS, IN FACT, ENTITLED TO NO-FAULT BENEFITS, PAID FOR BY THE POLICY HOLDERS OF THIS STATE WHO FOLLOW THE LAW AND PAY THEIR INSURANCE PREMIUMS AS REQUIRED.**

In its Findings of Facts and Conclusions of Law, again attached as **Exhibit 6**, the lower court made a number of Findings of Fact which, when viewed as a whole, should leave this Court with the "definite and firm conviction" that a mistake has been made. The specific Findings of Fact that are not supported by the evidence or, when viewed in conjunction with the other facts presented to the lower court, should leave this Court with the "definite and firm conviction that a mistake has been made," include the following:

- "3. That Plaintiff's use of the subject motor vehicle was sporadic and intermittent and that her access to same was restricted and dependent upon requesting permission from her husband for the use of the motor vehicle."

In fact, in Plaintiff Tamika Harrell's deposition taken on September 19, 2012, and admitted to the court as Trial Exhibit M, Ms. Harrell testified that she used the vehicle "periodically" and not on a sporadic and intermittent basis:

"Q. Had you ever driven that car before the accident date?

A. Yes.

Q. Okay. How many times?

A. **Periodically** when he lets me."

Deposition of Tamika Harrell, page 7.

She also acknowledged that, within the month of June 2011 (and the accident occurred on June 17, 2011), she also drove the vehicle at least a couple of times:

“Q. When was the last time you drove the Lincoln before the June 17, 2011, accident?

A. The last time I drove it [presumably before her deposition on September 19, 2012]? Sunday [presumably September 16, 2012].

\* \* \*

Q. Had you driven it within – ?

A. I can’t say – within maybe that couple – last couple of weeks, yeah, maybe I had drove it.

\* \* \*

A. I can’t give you a definite day of the week, but I can say within that month I probably had drove it a couple of times.”

She also acknowledged receiving at least six traffic tickets, prior to her involvement in the June 17, 2011, motor vehicle accident in 2½ years:

“Q. So what we’ve just gone over, you’ve gotten six tickets while driving the Lincoln; does that sound about right?

A. That’s probably right, because I didn’t’ have a proper license.”

Deposition of Tamika Harrell, 9/19/2012, pg 20.

Again, a reasonable inference can be drawn that, since she received seven traffic tickets in 2½ years, she was probably driving the vehicle far more often and did not receive any traffic citations – a reasonable inference that was overlooked by the court below.

Similarly, Arville Livingston testified, in his deposition, which was admitted as Trial Exhibit N, that she had driven the vehicle before the accident on many occasions and, more importantly, “more than once a week” between January 1, 2011, and June 17, 2011:

“Q. Okay. Had she ever driven that car before the accident?

A. Yes.

\* \* \*

Q. Would she have driven the car more than once a week between January 1, 2011, and June 17, 2011?

A. I would say yes.”

Deposition of Arville Livingston, pgs 7, 11.

He also testified that he was aware that she had received some tickets while driving the vehicle, although he was not aware of the **amount** of tickets she received:

“Q. As you sit here today, are you aware that she has received six tickets while driving the Lincoln?

A. No, I’m not aware of that many tickets.

Q. Has she driven the car more than six times?

A. Yes; since 2008, yes.”

Deposition of Arville Livingston, pg 8.

As indicated below, this deposition testimony is consistent with the testimony presented by Plaintiff and Mr. Livingston during the bench trial that took place on August 21, 2013.

Again, during the trial, Plaintiff admitted to driving the vehicle “periodically,” not “sporadically” or “intermittently”:

“Q. Okay. And were there ever times when you would work at Ms. Mills’ home [where she performed nursing services] and then go right from there to Starvin Marvin’s [where Plaintiff was employed as an exotic dancer] while using the Lincoln?

A. Not for work, no, but I used to just go up there to kind of peep the scene, so I can’t say specifically, you know, but I have went there **periodically**.

TR 8/21/2013, pg 11.

Q. Okay. And then you also received a ticket on November 21, 2010, in Detroit while driving the Lincoln; isn’t that correct?

A. Right, yes. I just don’t want to say yes and I don’t remember, ’cause I just don’t.

**I had a lot of tickets** and some of them I was trying to go to court for and didn’t know if they were all mine or, but yeah, they’re mostly all mine.

THE COURT: Why don’t we do this. Were all of the tickets you got for driving while license suspended with the Lincoln?

THE WITNESS: That was the only working vehicle in my home, yes, so, yeah, that was the only . . .”

\* \* \*

Q. Okay. So that's seven tickets while driving the Lincoln; is that correct?

A. Yes, sir.

Q. Okay. And it is your testimony today that those are the only seven times you've drove that Lincoln?

A. No, I've drove it **periodically** and I can't say definitely have [sic how] many times I drove it.

\* \* \*

Q. All right. Well then did you drive it between the Christmas tree incident [when she received her first traffic ticket on December 19, 2008] and February 4, 2009 [when she received her second citation]?

A. Did I drive it between February 4th of 2009?

Q. Between December 19, 2008, the Christmas tree incident, and February 4, 2009, the date of the second ticket?

A. In 2008? Like I said, I drove the car **periodically** and I can't say definite how many times and I can't say what days, you know, it was just **periodically** when I would have permission.

TR 8/21/2013, pgs 12-14.

She also had no basis to disagree with her husband's testimony, to the extent that she actually drove the vehicle more than once per week between January 1, 2011, and June 17, 2011 – the date of the accident:

Q. Okay. And if Arville had testified at his deposition that you drove the car more than one time a week between January 1, 2011, and June 17, 2011, the date of the accident, would you agree with him?

A. More than once a week?

Q. Yes, between, you drove the Lincoln more than once per week –

A. I can't definitely answer that . . .”

TR 8/21/2013, pg 20.

She also testified that she would drive the Lincoln to the nightclub, Starvin Marvin's on some occasions but she never told her husband about that:

“Q. And you drove the Lincoln to Starvin' Marvin's on occasion; is that correct?

A. I know I've been to the Starvin' Marvin's with it, but not often enough to say, you know –

Q. And when you would use the Lincoln to go to Starvin' Marvin's would you tell Arville, hey, I'm going up to dance or going up to see if there's any business at the club?

A. Well Arville was tight, kind of against that, so that was kind of something that I kind of kept from him, so I can't say that I would say I'm going to Starvin Marvin's. I would say I'm going to work and I kind of like kept that little room.

Q. You weren't truthful with him; is that correct?

A. Not a hundred percent when I went to the bar . . . I just wasn't totally honest about what I was doing with it.

TR 8/21/2013, pgs 22-23

Finally, in his testimony at trial, Arville Livingston affirmed his prior deposition testimony to the effect that his wife had, in fact, used the vehicle more than once per week between January 1, 2011, and June 17, 2011:

Q. So your answer in your deposition was yes, that Ms. Harrell drove the Lincoln more than once a week between January 1, 2011 and June 17, 2011?

A. Yes, that was my answer.

TR 8/21/2013, pg 38

**He then acknowledged that she may have driven the vehicle more than 24 times during the period of time from January 1, 2011, through June 17, 2011:**

Q. And Mr. Livingston, you agree that if there were 24 weeks between January 1, 2011 and June 17, 2011, that if Ms. Harrell drove that car once per week that would be 24 times she drove the car; is that correct?

A. Exactly.

Q. Okay. And there were sometimes during that time period where she may have taken it more than once per week; correct?

A. Yeah.

TR 8/21/2013, pg 40

Finally, Mr. Livingston testified that he was completely unaware of the fact that Plaintiff had used his Lincoln to go to the nightclub, Starvin' Marvin's:

Q. And also in that deposition you told me that Ms. Harrell never took the Lincoln to Starvin' Marvin's; is that correct?

A. That's correct.

Q. Okay. If Ms. Harrell testified that she did take the car to Starvin' Marvin's would that be news to you as you sit there today?

A. Oh, yeah, it would be.

Q. Okay. So she never asked your permission to take the car to Starvin Marvin's.

A. Oh, no, no. She knew how I felt about that.

Q. Okay. And if she testified today that she wasn't a hundred percent truthful when she wanted to go to Starvin' Marvin's would that surprise you today?

A. Yeah, it would surprise me.

TR 8/21/2013, pg 40

Finally, he also acknowledged that Plaintiff had received a number of traffic citations while driving his Lincoln and acknowledged that she certainly drove it more than seven times:

Q. And were you aware that including the June 2011 accident that Ms. Harrell received seven traffic tickets while driving the Lincoln?

A. I was aware that she' had got tickets, yes, but I wasn't, I didn't know the number.

Q. And she drove the 2008 Lincoln more than seven times; correct?

A. Yeah. Yeah.

TR 8/21/2013, pgs 41-42

Given these statements, especially Plaintiff's own testimony that she used the vehicle "periodically" and the inferences to be drawn from the fact that she received at least seven traffic tickets while driving the 2008 Lincoln in 2½ years, she certainly cannot be said to have used the vehicle "sporadically" or "intermittently" as indicated by the court.

Defendant likewise quarrels with Finding of Fact number 4, in which the Circuit Court indicates:

"That at no time did Plaintiff have unrestricted access to the motor vehicle."

In fact, throughout her deposition testimony and especially at trial, Plaintiff testified, over and over again, that notwithstanding her husband's protestations, she did use the vehicle in an unrestricted manner. Specifically, she testified that she would drive the vehicle to Starvin Marvin's, and would use her "ways" with her husband so that he would have no knowledge of her use of that vehicle.

Defendant also takes issue with Finding of Facts number 7, in which the Circuit Court indicated:

"7. That Tamika would have to convince Arville to let her drive his car and he would deny her that from time to time."

In fact, there is no testimony that would indicate that permission was ever denied by Mr. Livingston, and the lack of permission was final. As stated by Ms. Harrell in her deposition:

"Q. Now, you said that Arville wouldn't let you drive the car, but yet you had to get keys from him to drive the car; is that right?"

A. Yeah.

Q. Okay. So

A. **No, I didn't say he wouldn't let me drive the car.** I said he didn't want me to drive the car. But I just have a way to dissuade [sic persuade] him to, you know, allow me to

drive the car, you know, if I needed it. Because, like I said, I need to get to work and, you know, we couldn't survive on just him, you know, going to work. I will miss work. I will miss out on my, you know, my time here. I wasn't making money. So he knew, you know, that my argument was valid, that I needed to get to work or I needed to get to, you know, to my job, you know.

Deposition of Plaintiff, pgs 24-25 (emphasis added)

At trial, Ms. Harrell likewise testified that Arville Livingston never prohibited her from driving the vehicle:

“But I never said that he wouldn't let me drive, I said that he wouldn't let me – he didn't like for me to drive because I didn't have license, so I would have to sort of convince him to allow me to drive.”

TR 8/21/2013, pg 16

Mr. Livingston also testified that, if he did deny her permission to use the vehicle, she had a way of “asking” to use the vehicle “so I gave in.” (TR 8/21/2013, pg 42) In other words, even if permission was denied, the denial never stuck.

The Court also misstated the evidence regarding Finding of Fact number 8:

“8. That Tamika drove other cars during this period.”

In fact, Ms. Harrell testified, both in deposition and at trial, that she had more access to her husband's 2008 Lincoln than to any other vehicles:

“Q. And do you also remember telling us at the deposition that you had more access to the Lincoln than any other car you would have driven between the Christmas tree incident and your accident in June 2011?

A. Yeah, that's my husband's car. . . I would consider me having more access to that vehicle than any other vehicle.”

TR 8/21/2013, pgs 19-20

In this regard, the Court's Finding of Fact makes it appear as if Plaintiff's use of her husband's vehicle, and her friend's vehicles, were equal, or possibly less when, in fact, she acknowledged

that she had more access to her husband's vehicle than any other vehicle that she may have used during the relevant time period.

Defendant also quarrels with Finding of Fact number 6, which states:

“6. That Tamika and Arville were recently married prior to the accident.”

In his deposition, Mr. Livingston testified that they were married in March 2011. (Deposition of Arville Livingston, pg 6.) However, he also admitted that he had known Tamika Harrell since 2000 and she became “my significant other.” (Deposition of Arville Livingston, pg 7.)

Similarly, at trial, he testified that he and Ms. Harrell had been living together “shoot, thirteen years.” (TR 8/21/2013) Given the fact that Plaintiff admittedly received numerous traffic tickets during the time that she and Mr. Livingston were living together, the Circuit Court's Finding of Fact, regarding their newlywed status as of the time of the accident, leaves one with the erroneous impression that Ms. Harrell may not have used the vehicle prior to the date of their marriage when, in fact, just the opposite is true.

Viewed in isolation, these Findings of Fact may not seem important. However, the reviewing Court needs to examine the entire record, as well as the reasonable inferences that can be drawn from the evidence presented in the court below. *People v Roberts*, 292 Mich App 492, 808 NW 2d 290 (2011). In this case, a review of the entire record, including the reasonable inferences that can be drawn from the evidence, should leave this Court with the “definite and firm conviction that a mistake has been made,” thereby justifying a reversal of the lower court's ruling in this regard.

Furthermore, even though the court's Findings of Facts are reviewed under a “clearly erroneous” standard, the legal conclusions to be drawn from those Findings of Fact are reviewed *de novo*. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 840 NW2d 743 (2013); *Charles A.*

*Murray Trust v Futrell*, 303 Mich App 28, 840 NW 2d 775 (2013). For the reasons more fully articulated in Legal Argument II, *supra*, the lower court erroneously denied Titan's Motion for Summary Disposition, and this error was compounded when the Court refused to apply the proper standard for determining that Plaintiff was, in fact, an "owner" of her husband's uninsured motor vehicle, as that term is defined in MCL 500.3101(2)(k)(i). The Court of Appeals compounded this erroneous Conclusion of Law by engrafting a "continuous" use requirement onto the statutory language of MCL 500.3101(2)(k)(i). For these reasons, Defendant-Appellant Titan Insurance Company respectfully requests that this honorable Court reverse the decisions of the Court of Appeals and the Wayne County Circuit Court and remand the matter back to the Wayne County Circuit Court with instructions to enter an Order granting summary disposition in favor of Defendant-Appellant Titan Insurance Company, together with such other relief from this Court as may be deemed warranted.

## CONCLUSION AND RELIEF REQUESTED

Over the years, various panels of the Court of Appeals have engrafted language onto the statutory definition of the term “owner” found in MCL 500.3101(2)(k)(i). In *Ardt, supra*, the court refused to apply the plain and unambiguous language of MCL 500.3101(2)(k)(i), which simply references “having the use” of a motor vehicle for a period that is greater than thirty days and interpreted the phrase to mean “having the possessory use thereof” or “having the proprietary use thereof,” even though the words “possessory” or “proprietary” appear nowhere in the statutory language itself. The Court of Appeals in *Detroit Medical Center, supra*, further compounded the error by redefining the statutory definition as requiring “having the regular use thereof” or “having the exclusive use thereof,” even though the words “regular” or “exclusive” do not appear anywhere in the statutory language. In fact, given the fact that the 1988 legislation that added the definition of the term of “owner” to the No-Fault Insurance Act was tie barred to similar legislation that amended the definition of the term “owner” found in the Motor Vehicle Code, MCL 257.37, it appears that the Legislature deliberately chose not to incorporate an “exclusive use” requirement onto the statutory definition of the term “owner” in the No-Fault Act, even though the Motor Vehicle Code’s amendment makes reference to “exclusive use” of a motor vehicle. To make matters even worse, the Court of Appeals in this case has further compounded the error by redefining the statutory language to require “having the continuous use thereof” before one can be deemed an owner of an uninsured motor vehicle.

Judicial amendment of statutory language is unquestionably a violation of the Separation of Powers Doctrine. It is one thing to interpret the statute. It is quite another to judicially amend a statute, and Defendant respectfully submits that this is precisely what the Court of Appeals has done in this case, in *Detroit Medical Center, supra*, and even in *Ardt, supra*. Defendant

respectfully submits that it is incumbent upon this Court to peel back the layers of erroneous interpretations that have been built up since the Court of Appeals' decision in *Ardt, supra*, and to return the statutory definition of the term "owner" to the meaning originally intended by the legislature in 1988. By applying the dictionary definition of the term "use," as discussed more fully in Legal Argument II, *supra*, any person who "brings or puts into service or action" an uninsured motor vehicle has "the use" of that vehicle for purposes of MCL 500.3101(2)(k)(i). Any individual who "puts to some purpose" or "avails oneself" of an uninsured motor vehicle, for a period of time greater than thirty days, should be deemed an "owner" of that vehicle. Even if this Court is concerned over a possible overreach of that statutory definition to include members of a carpool, or employees who are unknowingly operating an uninsured motor vehicle furnished by their employer, this Court could apply the Owner's Liability Act, MCL 257.401, and define the universe of those individuals who are presumed to be operating a motor vehicle with the knowledge and consent of the owner as those individuals who likewise have a "right to use" that vehicle. As matters now stand, the current interpretation of MCL 500.3101(2)(k)(i) by various panels of the Court of Appeals is unworkable and allows individuals who may have a "right to use" a spouse's uninsured motor vehicle, by virtue of the marital relationship, to recover no-fault benefits through the Michigan Assigned Claims Plan, which is funded by every single policyholder in the State of Michigan. Such a result is contrary to the legislative intent behind the 1988 judicial amendment, which added the definition of the term "owner" to the No-Fault Insurance Act, as manifested by the plain language chosen by the legislature.

Accordingly, Defendant respectfully requests that this honorable Court grant its Application for Leave to Appeal and, after a full briefing of the issues involved in this matter, reverse the decision of the Michigan Court of Appeals and of the Wayne County Circuit Court

and remand this matter back to the Wayne County Circuit Court with instructions to enter and Order Granting Titan's Motion for Summary Disposition. Alternatively, Defendant requests this honorable Court take whatever other action it may deem warranted in order to effectuate the legislative intent behind the plain language of MCL 500.3101(2)(k)(i), which certainly has not been carried out by the various panels of the Court of Appeals that have examined this issue.

Respectfully Submitted,

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By:



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Dated: March 3, 2015

STATE OF MICHIGAN  
MICHIGAN SUPREME COURT

TAMIKA HARRELL,

Plaintiff-Appellee,

-vs-

TITAN INSURANCE COMPANY,

Defendant-Appellant.

SUPREME COURT NO.:

COURT OF APPEALS NO.: 318744

LOWER COURT NO.: 12-003939-NF

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**NOTICE OF FILING OF DEFENDANT-APPELLANT'S  
APPLICATION FOR LEAVE TO APPEAL**

PLEASE TAKE NOTICE that Plaintiff-Appellant, Titan Insurance Company, herein files its Application for Leave to Appeal in the above-captioned matter to the State of Michigan, Supreme Court.

Respectfully Submitted,

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By: \_\_\_\_\_

  
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Dated: March 3, 2015

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MARK S. GOLDBERG

March 3, 2015

Clerk of the Court  
Court Of Appeals  
201 West Big Beaver Road  
Suite 800  
Troy, Michigan 48084

Re: *HARRELL, Tamika v Titan Insurance Company*  
Docket No.: (Michigan Supreme Court)  
Docket No.: 318744 (Court of Appeals)  
Docket No.: 12-003939-NF (Wayne County Circuit Court)  
Claimant: Harrell, Tamika  
Claim No.: 77811000325  
Date of Loss: 6/17/2011  
Our File No.: 1.02013 (RMS/KAC)

Dear Clerk:

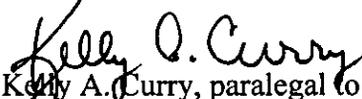
Pursuant to MCL 600.2529(1)(g), enclosed please find the following:

- **Notice of Filing of Defendant-Appellant's Application for Leave to Appeal**
- **Proof of Service**

Please file these documents per your usual procedures.

Very truly yours,

Law Offices of Ronald M. Sangster, PLLC

  
Kelly A. Curry, paralegal to  
Ronald M. Sangster Jr.  
[kcurry@sangster-law.com](mailto:kcurry@sangster-law.com)

/kac

Enclosures

cc: Michigan Supreme Court Clerk  
Mark M. Grayell, Esq.  
Dawn Pollitt-Key

STATE OF MICHIGAN  
MICHIGAN SUPREME COURT

TAMIKA HARRELL,  
Plaintiff-Appellee,

-vs-

TITAN INSURANCE COMPANY,  
Defendant-Appellant.

SUPREME COURT NO.:

COURT OF APPEALS NO.: 318744

LOWER COURT NO.: 12-003939-NF

---

BERNSTEIN & BERNSTEIN P.C.  
Thomas P. Calcaterra (P30326)  
Mark M. Grayell (P37069)  
Attorneys for Plaintiff  
18831 West 12 Mile Road  
Lathrup Village, Michigan 48076  
Phone: (248) 350-3700  
Fax: (248) 352-6680

LAW OFFICES OF RONALD M. SANGSTER, PLLC  
Ronald M. Sangster, Jr. (P39253)  
Attorney for Titan Insurance Company  
901 Wilshire Drive  
Suite 230  
Troy, Michigan 48084  
Phone: (248) 269-7040  
Fax: (248) 269-7050

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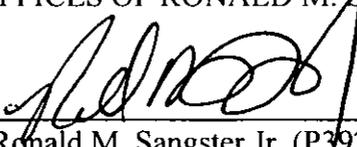
**NOTICE OF HEARING**

TO: Mark M. Grayell (P37069)  
Bernstein & Bernstein P.C.  
Attorney for Plaintiff-Appellee  
18831 West 12 Mile Road  
Lathrup Village, Michigan 48076

The attached Application for Leave to Appeal is set for hearing on Tuesday, March 24, 2015. There will be no oral argument.

Respectfully Submitted,

LAW OFFICES OF RONALD M. SANGSTER, PLLC

By: 

Ronald M. Sangster Jr. (P39253)  
Attorney for Titan Insurance Company  
901 Wilshire Drive, Suite 230  
Troy, Michigan 48084  
(248) 269-7040

Dated: March 3, 2015

STATE OF MICHIGAN  
MICHIGAN SUPREME COURT

TAMIKA HARRELL,  
Plaintiff-Appellee,

-vs-

TITAN INSURANCE COMPANY,  
Defendant-Appellant.

SUPREME COURT NO.:

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Suite 230  
Troy, Michigan 48084  
Phone: (248) 269-7040  
Fax: (248) 269-7050

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**PROOF OF SERVICE**

Kelly A. Curry, being sworn, states that on March 3, 2015, she mailed copies of Notice of Hearing, Application for Leave to Appeal on Bernstein & Bernstein P.C., Mark M. Grayell (P37069), Attorney for Plaintiff-Appellee, 18831 West 12 Mile Road, Lathrup Village, Michigan 48076; and a Notice of Filing of the Application on the Clerk of the Court of Appeals, 201 West Big Beaver Road, Suite 800, Troy, Michigan 48084 by placing the documents in the United States mail, properly addressed, with first class postage fully prepared thereon; and the Clerk of the Wayne County Circuit Court by filing same through the Wayne County Circuit Court e-filing system.

  
\_\_\_\_\_  
Kelly A. Curry

# THE LAW OFFICES OF RONALD M. SANGSTER PLLC

ATTORNEYS & COUNSELORS

901 WILSHIRE DRIVE, SUITE 230, TROY, MICHIGAN 48084

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GENESEE COUNTY OFFICE

12750 SOUTH SAGINAW STREET, SUITE 204

GRAND BLANC, MICHIGAN 48439

Phone: (810) 584-7081

Fax: (810) 584-7129

MACOMB COUNTY OFFICE

93 SOUTH MAIN STREET

MT. CLEMENS, MICHIGAN 48043-2379

Fax: (586) 466-5955

*OF Counsel:* LEO E. JANUSZEWSKI  
MARK S. GOLDBERG

March 3, 2015

Clerk of the Court  
Michigan Supreme Court of Appeals  
Michigan Hall of Justice  
925 West Ottawa Street  
Lansing, Michigan 48913

Re: *HARRELL, Tamika v Titan Insurance Company*  
Docket No.: (Michigan Supreme Court)  
Docket No.: 318744 (Court of Appeals)  
Docket No.: 12-003939-NF (Wayne County Circuit Court)  
Claimant: Harrell, Tamika  
Claim No.: 77811000325  
Date of Loss: 6/17/2011  
Our File No.: 1.02013 (RMS/KAC)

Dear Clerk:

Enclosed please find an original and seven (7) copies of the following:

- **Defendant-Appellant Titan Insurance Company's Notice of Filing Application for Leave to Appeal;**
- **Defendant-Appellant Titan Insurance Company's Application for Leave to Appeal;**
- **Notice of Hearing for March 24, 2015;**
- **Proof of Service;**
- **Court of Appeals Order [pursuant to MCR 7.302(A)(1)(g)];**

Also enclosed is our check number 10103, in the amount of \$375.00 as payment of the filing fee.

*Law Offices of Ronald M. Sangster P.I.*

Clerk of the Court

*HARRELL, Tamika v Titan Insurance Company*

Docket No.: (Michigan Supreme Court)

Docket No.: 318744 (Court of Appeals)

Docket No.: 12-003939-NF (Wayne County Circuit Court)

Claimant: Harrell, Tamika

Claim No.: 77811000325

Date of Loss: 6/17/2011

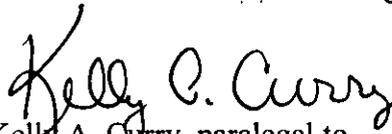
March 3, 2015

Page 2 of 2

Please file these documents per your usual procedures.

Very truly yours,

Law Offices of Ronald M. Sangster, PLLC



Kelly A. Curry, paralegal to  
Ronald M. Sangster, Jr.

[kcurry@sangster-law.com](mailto:kcurry@sangster-law.com)

/kac

Enclosure

cc: Mark M. Grayell, Esq.  
Dawn Pollitt-Key