STATE OF MICHIGAN

IN THE SUPREME COURT

ALICE JO MORALES, as Guardian and Conservator of ANTONIO MORALES, a/k/a ANTHONY MORALES, a legally incapacitated person,

Plaintiff-Appellant, and Cross-Appellee,

v

AUTO-OWNERS INSURANCE COMPANY, a Michigan corporation,

Defendant-Appellee, and Cross-Appellant.

______________________________________/

Supreme Court No. 122601

Court of Appeals No. 233826

Lower Court:
Missaukee County Circuit Court
Case No. 92-2882-NF
Hon. Charles D. Corwin

Wayne J. Miller (P31112)
Attorney for Plaintiff-Appellant Morales
MILLER, SCHPIECE & TISCHLER, P.C.
27611 Northwestern Highway, Suite 200
Southfield, Michigan 48034
(248) 945-1040

Jeffrey O. Birkhold (P27905)
John J. Bursch (P57679)
Janet Ramsey (P63285)
Sarah M. Riley (P58531)
Attorney for *Amicus Curiae* Wrench LLC, Joseph Shields, and Thomas Rinks
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
(616) 752-2000

Lori M. Silsbury (P39501)
Attorney for Defendant-Appellee Auto-Owners Insurance Company
DYKEMA GOSSETT PLLC
800 Michigan National Tower
Lansing, Michigan 48933-1742
(517) 374-9100

Kelly M. Hagan (P60967)
Zimmerman, Kuhn, Darling, Boyd, Taylor and Quandt, PLC
Attorneys for James W. Boyd, Chapter 7 Bankruptcy Trustee
412 South Union Street
Traverse City, MI 49684
(231) 941-3446

AMICUS CURIAE BRIEF OF WRENCH LLC, JOSEPH SHIELDS, AND THOMAS RINKS IN SUPPORT OF PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

TABLE OF CONTENTS

TABLE OF CONTENTS i

INDEX OF AUTHORITIES ii

STATEMENT OF RELIEF SOUGHT 1

QUESTION PRESENTED FOR REVIEW 2

STATEMENT OF GROUNDS FOR APPEAL 3

STATEMENT OF FACTS AND PROCEEDINGS 4

STANDARD OF REVIEW 6

ARGUMENT 6

I. SECTION 6013 REQUIRES PRE-JUDGMENT INTEREST FROM THE DATE OF THE FILING OF THE COMPLAINT WITHOUT EXCEPTION FOR PRE-JUDGMENT APPEALS 6

A. Section 6013's Plain Language Bars Abatement of Interest During Pre-judgment Appeals. 6

B. Section 6013's Purpose Bars Abatement of Interest During Pre-judgment Appeals 8

II. THE *DEDES* DECISION IS CLEARLY ERRONEOUS AND SHOULD BE OVERRULED 9

III. AUTO-OWNERS' ARGUMENTS LACK MERIT AND SHOULD BE REJECTED 12

CONCLUSION 15

INDEX OF AUTHORITIES

Cases

Buzzita v *Larizza Indus*
465 Mich 975; 641 NW2d 593 (2002) 7, 8

Coughlin v *Dean*
174 Mich App 346; 435 NW2d 794 (1989) 10

Cruz v *State Farm Mut Auto Ins Co*
466 Mich 588; 648 NW2d 591 (2002) 6

Dedes v *Asch*
233 Mich App 329; 590 NW2d 605 (1998) 9, 11, 12, 15

Eley v *Turner*
193 Mich App 244; 483 NW2d 421 (1992) 10, 11, 12

Eric RR Co v Tomkins
304 US 64 (1938) 5

Gordon Sel-Way, Inc v *Spence Bros, Inc*
438 Mich 488; 475 NW2d 704 (1991) 8, 11

Heyler v *Dixon*
160 Mich App 130; 408 NW2d 121 (1987) 9, 10, 11, 12

Hoffman v *Spartan Stores, Inc*
1996 WL 33360698 10

Kingsley Assocs, Inc v Moll PlastiCrafters, Inc,
65 F3d 498 (CA 6, 1995) 5

People v *$176,598 United States Currency*
242 Mich App 342; 618 NW2d 922 (2000) 14

People v *Doyle*
451 Mich 93; 545 NW2d 627 (1996); MCR 7.215(I)(1) 12

People v *Herron*
464 Mich 593; 628 NW2d 528 (2001) 6, 8

People v. McIntire
461 Mich. 147; 599 N.W.2d 102 (1999) 7

Perceptron, Inc v Sensor Adaptive Machs, Inc
221 F3d 913 (CA 6, 2000) ... 5

Phinney v *Perlmutter*
222 Mich App 513, 544; 564 NW2d 532 (1997) ... 11, 14

Rittenhouse v *Erhart, et al.*
424 Mich 166; 380 NW2d 440 ... 14

Robbins v *American Bearing & Power Transmission, Inc*
1999 WL 357790 ... 7

Rodriguez v *Farmers Ins Group of Cos*
251 Mich App 454; 651 NW2d 428 (2002) ... 7

Rodriguez v *Solar of Michigan, Inc*
191 Mich App 483; 478 NW2d 914 (1991) ... 10

Schreiner v *Preston*
2002 WL 550449 ... 11

Sloan v *Finsilver Assocs*
208 F Supp 2d 744 (ED Mich, 2002) ... 12

Yaldo v *North Pointe Ins Co*
457 Mich 341; 578 NW2d 274 (1998) ... 8

Statutes

28 U.S.C. § 1332 ... 5

MCL 500.3142 ... 7

MCL 600.6013 ... passim

MCL 600.6013(1) ... 13

MCL 600.6013(5) ... 12, 13

MCL 600.6013(8) ... 12, 13

MCL 600.6013(9) ... 13

MCR 7.302(B)(3) ... 3

MCR 7.302(B)(5) ... 3

Other Authorities

American Jurisprudence 2d 10

STATEMENT OF RELIEF SOUGHT

Wrench LLC, Joseph Shields, and Thomas Rinks (collectively "Wrench") file this Amicus Curiae Brief in support of the Application for Leave to Appeal submitted by Plaintiff-Appellant Alice Jo Morales, as Guardian and Conservator of Antonio Morales, a legally incapacitated person ("Morales"). The Court of Appeals held, in direct contravention of the plain and mandatory language of MCL 600.6013 ("Section 6013"), that judgment debtors do not have to pay pre-judgment interest during the period of a pre-judgment appeal. Wrench asks this Court to reverse that holding and rule that the plain and mandatory language of Section 6013 requires that pre-judgment interest be paid from the time of filing the complaint without abatement for pre-judgment appeals.

QUESTION PRESENTED FOR REVIEW

1. Does pre-judgment interest accrue under Section 6013 during a pre-judgment appeal, when the plain and mandatory language of Section 6013 requires that interest be paid from the date of filing the complaint, and Section 6013's purpose is to compensate for the time-value of money?

The Court of Appeals answered: No.

The trial court answered: Yes.

Wrench answers: Yes.

STATEMENT OF GROUNDS FOR APPEAL

This appeal arises out of the Court of Appeals' holding that, despite the clear statutory language of Section 6013, judgment debtors do not have to pay pre-judgment interest for periods that a case was on appeal prior to judgment. That holding is clearly erroneous and will cause material injustice to Michigan's judgment creditors. MCR 7.302(B)(5). The decision below also conflicts with well-established rules of statutory construction enunciated by this Court. *See* MCR 7.302(B)(5).

In addition, this issue "involves legal principles of major significance to the state's jurisprudence." MCR 7.302(B)(3). The Court of Appeals decision ignores the Legislature's clear mandate in Section 6013 that pre-judgment interest runs from the date the complaint was filed, and it erodes the statute's purpose by preventing successful litigants from being fully compensated for the time-value of money.

STATEMENT OF FACTS AND PROCEEDINGS

The facts and proceedings below in this case are fully presented by the parties' appellate pleadings. The facts and proceedings in Wrench's federal court case against Taco Bell Corporation ("Taco Bell"), as pertinent to pre-judgment interest under Section 6013, are briefly summarized here.[1]

In 1995, Joseph Shields and Thomas Rinks created Wrench LLC, a Grand Rapids-based Michigan limited liability company, to promote, market, and license their "Psycho Chihuahua" character – a clever chihuahua with an attitude. Starting in June 1996 and continuing about one year, Taco Bell solicited Wrench regarding the adaptation and use of Psycho Chihuahua by Taco Bell in advertising and marketing. In 1997, Taco Bell terminated its discussions with Wrench, but began a national advertising campaign featuring a clever chihuahua with an attitude. Over the next two and one-half years, Taco Bell spent $500 million on this highly successful advertising campaign.

Wrench filed suit against Taco Bell in the federal District Court for the Western District of Michigan based on diversity of citizenship in January 1998, alleging breach of an implied-in-fact contract and various torts. On June 10, 1999, the federal District Court granted Taco Bell summary judgment and dismissed all of Wrench's claims. The Sixth Circuit Court of Appeals reversed on July 6, 2001. The United States Supreme Court denied Taco Bell certiorari review on January 22, 2002. On June 4, 2003, after three weeks of trial and five and one-half years of litigation, the jury entered a verdict in favor of Wrench and against Taco Bell in the amount of $30,174,031.00. The Court entered a judgment in that amount on the same day.

---

[1] The case is filed in the federal District Court for the Western District of Michigan; is captioned *Wrench LLC, Joseph Shields, and Thomas Rinks* v *Taco Bell Corporation*, No. 1:98-CV-45; and was filed on January 18, 1998.

On June 18, 2003, Wrench moved to amend the judgment to include $11,479,661.32 in pre-judgment interest under Section 6013,[2] which directs that pre-judgment interest be calculated at 6-month intervals from the date of filing the complaint at rates determined by the state treasurer and compounded annually. MCL 600.6013(8). Taco Bell opposes Wrench's motion, arguing that pre-judgment interest was tolled for the two and a half years the case was on appeal to the Sixth Circuit and United States Supreme Court. If successful, this argument will result in more than a $5 million reduction in Wrench's pre-judgment interest.

Accordingly, the issue of pre-judgment interest presented by Morales's Application for Leave to Appeal — whether pre-judgment interest under Section 6013 accrues during a pre-judgment appeal — is squarely before the federal District Court in Wrench's suit against Taco Bell. Wrench's interest in Morales's Application is thus clear,[3] and this Court should allow Wrench to file an *Amicus Curiae* Brief in support of Morales's Application for Leave to Appeal.

---

[2] The federal District Court has diversity jurisdiction over the dispute between Wrench and Taco Bell. 28 U.S.C. § 1332. When jurisdiction is based on diversity of citizenship, "[p]rejudgment interest is a substantive element of damage which must be determined under state law, in this case[,] Michigan law." *Perceptron, Inc v Sensor Adaptive Machs, Inc*, 221 F3d 913, 922 (CA 6, 2000) (citations omitted).

[3] The federal District Court in applying Section 6013 will be bound only by decisions of this Court. *Kingsley Assocs, Inc v Moll PlastiCrafters, Inc*, 65 F3d 498, 507 (CA 6, 1995) (citing *Eric RR Co v Tomkins*, 304 US 64 (1938)). Because this Court has not addressed whether pre-judgment interest continues to accrue during the pendency of a pre-judgment appeal, the federal District Court will have to "predict" the position this Court might take. *Id.*

STANDARD OF REVIEW

This Court's review of statutory interpretation is *de novo*. *Cruz* v *State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002).

ARGUMENT

I. SECTION 6013 REQUIRES PRE-JUDGMENT INTEREST FROM THE DATE OF THE FILING OF THE COMPLAINT WITHOUT EXCEPTION FOR PRE-JUDGMENT APPEALS.

Section 6013 provides for mandatory accrual of pre-judgment interest from the date of the filing of the complaint. There is no statutory exception for periods of delay that a court deems not the fault of the losing party, including any pre-judgment appeal period. This comports with the purpose of the statute, which exists to compensate a winning party for the lost time-value of money. Every delay in litigation deprives the winning party of the time-value of money, regardless of the cause of delay. This Court should enforce Section 6013 as the Legislature wrote it.

A. Section 6013's Plain Language Bars Abatement of Interest During Pre-judgment Appeals.

Under Michigan law, statutory construction starts by examining the statute's plain language. *People* v *Herron*, 464 Mich 593, 611; 628 NW2d 528 (2001). Where the language is unambiguous, courts presume the Legislature intended the meaning clearly expressed. *Id.* Further judicial construction is not permitted, and the statute must be enforced as written. *Id.*

The plain language of Section 6013 is clear and unambiguous: pre-judgment interest on a money judgment is mandatory from the date of filing the complaint. MCL 600.6013(2) and (3) ("interest on the judgment is calculated from the date of filing the complaint"), MCL 600.6013(4), (5), and (7) ("interest is calculated from the date of filing the complaint"); MCL 600.6013(8) ("interest on a money judgment . . . is calculated . . . from the

date of filing the complaint"). *See Rodriguez* v *Farmers Ins Group of Cos*, 251 Mich App 454, 460; 651 NW2d 428 (2002) ("An award of interest is mandatory in all cases to which the statute applies."); *Robbins* v *American Bearing & Power Transmission, Inc*, 1999 WL 357790, at *6 (6th Cir, May 14, 1999)[4] ("In general, Michigan courts have held that where [Section 6013] expressly provides for an award of interest, courts may not use their discretion in determining whether to award interest.").

Chief Justice Corrigan applied the plain language rule to Section 6013 last year in a concurrence to an order denying leave to appeal. *Buzzita* v *Larizza Indus*, 465 Mich 975; 641 NW2d 593 (2002). In her opinion, Justice Corrigan agreed with the other Justices that it was not the Court's role to create statutory exceptions where they do not exist:

> [C]ourts are bound to apply the statute as written. This Court lacks authority to rewrite statutes to conform to our view of sound public policy. Indeed, we must apply statutory text even where we view the result as "absurd" or "unjust." *People v. McIntire*, 461 Mich. 147, 156 n.2, 599 N.W.2d 102 (1999). In short, the proper role of the judiciary is to interpret and not rewrite the law.

Id. at 975, 641 N.W.2d at 594 (emphasis added).

Simply put, Section 6013 mandates pre-judgment interest from the date of filing the complaint. There is no statutory exception for the time period during which a case is subject to a pre-judgment appeal. And courts must apply Section 6013 as written; they cannot rewrite the statute to create an exception for pre-judgment appeals.

Here, the Court of Appeals below inconsistently applied the plain language rule. It first analyzed whether penalty interest applies under MCL 500.3142, holding that the "clear language of the statute compels such interest regardless of the reasonableness of the insurer's decision to withhold benefits." *Morales*, 2002 WL 31264641, at *1. Yet the Court of Appeals

---

[4] All unpublished cases cited in this Brief are collected at Exhibit A.

then ignored the plain language of Section 6013 and cursorily accepted a judicially-created exception to the statute abating pre-judgment interest during an appeal. *Id.* In so doing, the Court of Appeals disregarded this Court's dictates to strictly interpret statutes in accordance with their plain language, *see, e.g.*, *Herron*, 464 Mich at 611, as most recently stated by Chief Justice Corrigan in interpreting Section 6013 itself, *Buzzita*, 465 Mich at 975. This Court should thus grant Morales's Application; reverse the Court of Appeals; and rule that Section 6013 requires pre-judgment interest from the date of filing the complaint without exception for periods of pre-judgment appeal.

B. Section 6013's Purpose Bars Abatement of Interest During Pre-judgment Appeals.

Section 6013's purpose supports the statute's plain language and bars interest abatement during periods of pre-judgment appeal. In Michigan, pre-judgment interest is a substantive element of damages, not a punitive award. "The purpose of [the] interest is to 'recompense the prevailing party for the delay in payment of the money damages determined and to put back in his pocket some of the expense he incurs in instituting and prosecuting an action.'" *Yaldo* v *North Pointe Ins Co*, 457 Mich 341, 350; 578 NW2d 274 (1998) ("The purpose of M.C.L. § 600.6013 is to compensate the claimant for delays in recovering money damages."). As this Court has described, the "doctrine recognizes that money has a 'use value' and interest is a legitimate element of damages used to compensate the prevailing party for the lost use of its funds." *Gordon Sel-Way, Inc* v *Spence Bros, Inc*, 438 Mich 488, 499; 475 NW2d 704 (1991).

Given this purpose, there is no point in parsing the reasons why a proceeding was delayed. Whether there was a pre-judgment appeal or even an event of delay outside the losing party's control, the losing party had the "use value" of the money, and the prevailing party did not. The statute's purpose is thus furthered by straight application of the clear statutory

language, compensating Morales, Wrench, and other judgment creditors for "lost use" of their funds during litigation.

II. THE *DEDES* DECISION IS CLEARLY ERRONEOUS AND SHOULD BE OVERRULED.

Instead of looking to Section 6013's plain language, the Court of Appeals below cited *Dedes* v *Asch,* 233 Mich App 329; 590 NW2d 605 (1998), to hold that Morales cannot recover pre-judgment interest for the period her case was appealed before judgment. But *Dedes* is a case without foundation in Section 6013 or Michigan law. Moreover, *Dedes* visits material injustice upon judgment creditors by depriving them of the time-value of their money, contrary to legislative direction in Section 6013. *Dedes* should be repudiated, and the Court of Appeals' decision below should be reversed.

The Michigan Legislature first amended Section 6013 in 1965 to provide for pre-judgment interest from the "filing of the complaint." For more than 30 years after that, every court and attorney in Michigan assumed, correctly, that prevailing parties were entitled to pre-judgment interest -- even when a case went up on appeal before final judgment.

The genesis for the judicially-created exception to Section 6013 for pre-judgment appeals is an innocent (though ill-conceived) 1987 Michigan Court of Appeals decision holding, as a matter of first impression, that a trial court stay tolls the running of statutory interest. *See Heyler* v *Dixon*, 160 Mich App 130; 408 NW2d 121 (1987). In *Heyler*, the trial court stayed proceedings for 16½ months while waiting for a decision from this Court in another case affecting the outcome of the stayed action, then disallowed pre-judgment interest during the stay. *Id.* at 151-52. Rather than applying Section 6013's plain text and purpose, the Court of Appeals grafted a non-Michigan, non-statutory rule of law onto Section 6013 in the unique circumstances before it:

> In view of the decisions in other jurisdictions that, where delay is caused through no fault of the debtor and because delay in the instant case was not occasioned by defendant . . ., we hold that the trial court in the instant case did not err in disallowing prejudgment interest during the period of the stay.

Id. at 153 (emphasis added). The only authority cited was American Jurisprudence 2d.[5]

Thus, *Heyler* relied on non-Michigan law to create an exception to a statute otherwise plain on its face. Nonetheless, the genie was out of the Court of Appeals bottle, and the "delay is not my fault" exception continues to be parroted sporadically in Court of Appeals decisions. *See, e.g., Rodriguez* v *Solar of Michigan, Inc*, 191 Mich App 483, 494-95; 478 NW2d 914 (1991) (pre-judgment interest should not accrue during stay caused by insurer insolvency).

As subsequent panels struggled to apply this unwarranted exception to the plain language of Section 6013, no one assumed the *Heyler* loophole applied when appeals were pending. Thus, while the Court of Appeals in *Eley* v *Turner*, 193 Mich App 244; 483 NW2d 421 (1992), held that a judgment debtor was not responsible for interest during the time its court file was lost in transit between courts, the court refused to consider whether pre-judgment interest should be disallowed for the entire length of a pre-judgment appeal. *Id.* at 247. *Cf. Coughlin* v *Dean*, 174 Mich App 346, 352-55; 435 NW2d 794 (1989) (rejecting judgment debtor's *Heyler* argument that post-judgment interest does not accrue during an appeal); *Hoffman* v *Spartan Stores, Inc*, 1996 WL 33360698, at *3 (Mich Ct App, Aug 9, 1996) (same).

[5] No case cited by American Jurisprudence 2d addresses pre-judgment interest while a case is on appeal. *See Heyler*, 160 Mich. App. at 152-53 (citing 45 Am. Jur. 2d *Interest and Usury* § 103). The treatise instead discussed the apparent practice of some jurisdictions to exclude pre-judgment interest where judicial process prevented the debt's payment, "unless it appears or can fairly be presumed that [the judgment debtor] actually gained some advantage by the use of the money … ." 160 Mich. App. at 152-53 (citing 45 Am. Jur. 2d, *Interest and Usury* § 103). Moreover, "…according to some authorities, [the debtor] must pay the money into court in order to escape the payment of interest." *Id.* *Heyler* ignored these caveats, today found in 45 Am Jur 2d, *Interest and Usury* § 77.

Then, in 1998, after 30 years of applying pre- and post-judgment interest during appeals periods, a Court of Appeals panel in *Dedes* extended the "not my fault" rule to a losing defendant who had initially won a motion for summary disposition in the trial court that, upon the plaintiff's appeal, this Court reversed some four years later. *Dedes*, 233 Mich App 329. Ironically, the *Dedes* panel cited only one case in support of its new rule, *Phinney* v *Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997), which cites *Eley* for the "not my fault" rule. It was *Eley*, of course, that refused to consider whether pre-judgment interest should be disallowed during appeal periods.

The *Dedes* panel surmised that to "allow interest to continue to accrue during an appellate process would hinder parties from asserting new and innovative arguments in the trial court for fear that interest will continue to accrue on a claim that may be reversed during the appeal process." 233 Mich App at 340. This reasoning stands Section 6013 on its head. Interest very well may accrue while a claim is on appeal, but the judgment debtor still has use of the money. And it is this lost "use value" for which pre-judgment interest is awarded under Section 6013 in the first place, as this Court has held. *Gordon Sel-Way*, 438 Mich at 499.

The absurdity of the *Dedes* rule is further illustrated by its rote application in unpublished opinions to successful plaintiffs' appeals, as in this case. For example, in *Schreiner* v *Preston*, 2002 WL 550449 (Mich Ct App, April 12, 2002), the panel applied *Dedes* so far as to toll post-judgment interest during a plaintiff's successful appeal from parts of the judgment. *Id.* at 4. As a result, the innocent "loophole" that *Heyler* created out of whole cloth has now evolved into a nonsensical rule that even the *Heyler* court would not recognize.

The confusion surrounding *Heyler, Dedes*, Section 6013, and pre-judgment interest in Michigan has spread to the federal courts. *Sloan* v *Finsilver Assocs,*

208 F Supp 2d 744, 747 (ED Mich, 2002). While *Sloan* acknowledged *Eley*, which "did award interest for the period of the appeal, and only abated it during the sub-period when the case file was lost," the court ultimately followed *Dedes*, because *Dedes* was "more recent" than *Eley*. *Id.* at 747. In so holding, the *Sloan* court ignored that it is the prior, not more recent, published Michigan Court of Appeals decision that remains controlling authority in such a conflict. *People* v *Doyle*, 451 Mich 93, 99 n10; 545 NW2d 627 (1996); MCR 7.215(I)(1).

This Court should repudiate *Dedes*. First, *Dedes* is wholly inconsistent with Section 6013's plain language, which contains no interest "loophole" for appeals periods. Second, *Dedes* directly contradicts the statute's purpose of compensating parties for the lost time-value of money damages. Third, *Dedes* is nothing more than the culmination of a line of cases originating with *Heyler*, which, against all modern rules of statutory construction of this Court, grafted common law decisions of non-Michigan cases (cited in Am. Jur. 2d) on Michigan's unambiguous interest statute. For these reasons, this Court should grant leave, reverse the Court of Appeals, and return to the plain language of Section 6013.

III. AUTO-OWNERS' ARGUMENTS LACK MERIT AND SHOULD BE REJECTED.

Auto-Owners argues that Morales's right to pre-judgment interest resides in Section 6013(8) rather than Section 6013(5), as Morales contends. (Br in Opp to App for Leave at 8-10.) But that argument, whether or not correct, is irrelevant.[6] Both subsections use mandatory language to require that pre-judgment interest accrues from the date of the filing of the complaint. *Compare* MCL 600.6013(5) ("… interest is calculated from the date of filing the complaint to the date of satisfaction of the judgment …"), *with* MCL 600.6013(8) ("… interest … is calculated … from the date of filing the complaint … on the entire amount of the money

[6] In Wrench's case, MCL 600.6013(8) applies.

judgment"). Neither subsection states that interest does not accrue during pre-judgment appeals. And courts are prohibited from judicially rewriting the statute to create such an exception.

Section 6013's other subsections underscore the unqualified application of subsections (5) and (8). In subsections (1) and (9), the Legislature expressly created exceptions to the recovery of pre-judgment interest. MCL 600.6013(1) (no pre-judgment interest for future damages); MCL 600.6013(9) (no pre-judgment interest after a bona fide, reasonable, and written offer of settlement in a tort case is filed with the court). Thus, the Legislature has clearly considered what exceptions are appropriate to Section 6013's mandatory pre-judgment interest and, had it desired to do so, it could have created an exception for pre-judgment appeals. But it did not do so, leaving subsections (5) and (8) unqualified in their application to pre-judgment appeal periods. In short, the Legislature knew how to create exceptions to Section 6013. It did not create an exception for pre-judgment appeals, and the courts are thus barred from doing so.

Auto-Owners argues that subsection (8) of the statute does not state, like subsection (5), that interest runs "to the date of satisfaction of judgment." (Br in Opp to Leave to App at 9.) But subsection (8) follows a slightly different format because it deals with civil actions where no written instrument governs the relationship between the parties and sets forth the methodology for calculating a variable rate of interest. MCL 600.6013(8). Subsection (8) remains clear that interest starts with the date of the filing of the complaint and applies to the entire amount of the judgment. *Id.* The Legislature's silence as to exceptions can be read only to mean that there are no exceptions.

Auto-Owners also makes the ludicrous statement that a claim ceases to exist during a pre-judgment appeal. (Br in Opp to App for Leave to App at 9.) But a plaintiff's claim does not cease to exist during an appeal if the trial court erroneously dismisses it and an appeals

court eventually reverses. A claim does not disappear and return. Once filed, a claim against a defendant remains filed and continues to exist until dismissed by a final, non-appealable judgment.

The cases cited by Auto-Owners do not support an exception to Section 6013 for pre-judgment appeal periods. The *Phinney* case does not address in any manner the issue of interest and pre-judgment appeals. The issue in *Phinney* was whether pre-judgment interest runs from the date of the filing of the complaint or from the date of the filing of an amendment to the complaint, where the only claims on which plaintiff prevailed were set forth in the subsequently filed amendment. The court applied the plain language of the statute and held that interest ran from the date of the filing of the original complaint. *Phinney*, 222 Mich App at 540-542.

Likewise, the *Rittenhouse* case in no manner involved the issue of pre-judgment appeals and pre-judgment interest under Section 6013. *Rittenhouse* simply held that pre-judgment interest runs against a judgment debtor from the date of the filing of the first complaint that named the judgment debtor as a party, rather than from the date of the filing of a prior complaint against other parties only. *Rittenhouse*, 424 Mich at 217-218. In that context, this Court noted: "That the Legislature intended plaintiffs to be compensated for periods during which no disputed claim even existed against the judgment debtor strains credulity." *Id.* at 218 This Court made no comment even remotely suggesting that interest might abate after the date the complaint was filed against the defendant in question.

Auto-Owners also cites *People* v *$176,598 United States Currency*, 242 Mich App 342, 349; 618 NW2d 922 (2000), and states that the opinion was affirmed by this Court at 465 Mich 382; 633 NW2d 367. However, this Court <u>reversed</u> the Court of Appeals because no pre-judgment interest whatsoever should have been awarded, holding that the restitution order in

the underlying forfeiture proceeding was not a money judgment in a civil action and thus did not come within Section 6013 at all. 465 Mich at 383, 389.

Finally, Auto-Owners argues that the Legislature adopted the *Dedes* exception to Section 6013 by amending the statute without expressly repudiating the judicially created exception for pre-judgment appeals. This argument is frivolous. *Dedes* was the first case to hold that pre-judgment interest under Section 6013 is abated during pre-judgment appeal periods. The Court of Appeals decided *Dedes* in 1998. The statutory amendments cited by Auto-Owners occurred in 1986, 1987, and 1993.

CONCLUSION

The Court of Appeals' decision to graft a judicially-created exception to Section 6013 is not permitted by the plain language of the statute. *Dedes*, holding to the contrary, lacks any reliable foundation and should be overruled. Auto-Owners has not offered any compelling argument to the contrary because Section 600.6013 is plain and unambiguous. Accordingly, Wrench respectfully requests that this Court either grant leave or peremptorily reverse the Court of Appeals' decision. This Court should reinstate the holding of the Circuit Court that Morales is entitled to pre-judgment interest for the entire pre-judgment period that her case was pending.

Dated: August 13, 2003

WARNER NORCROSS & JUDD LLP

By ________________________________

Jeffrey O. Birkhold (P27905)
John J. Bursch (P57679)
Janet Ramsey (P63285)
Sarah M. Riley (P58531)
Attorneys for Amicus Curiae Wrench LLC,
Joseph Shields, and Thomas Rinks
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
(616) 752-2000

886838-8