Case No. 1150041

IN THE SUPREME COURT OF ALABAMA

WARREN and JOHANNA GRIMES, *Appellants*

v.

ALFA MUTUAL INSURANCE COMPANY, *Appellee*

On Appeal from the
Circuit Court of Coffee County, Alabama
Enterprise Division
CV-2012-900141

BRIEF OF AMICUS CURIAE ALABAMA DEFENSE LAWYER'S ASSOCIATION

Allen M. Estes, ADLA President
BALCH & BINGHAM, LLP
P.O. Box 306
Birmingham, Al 35201-0306
Phone: (205) 226-8717
aestes@balch.com

Sharon D. Stuart, Chairperson
ADLA Amicus Curiae Committee
CHRISTIAN & SMALL, LLP
505 North 20th Street
Suite 1800
Birmingham, AL 35203
Phone: (205) 795-6588
sdstuart@csattorneys.com

Mark D. Hess
HAND ARENDALL, LLC
2001 Park Place North
Suite 1200
Birmingham, AL 35203
Phone: (205) 324-4400
mhess@handarendall.com

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STATEMENT OF THE INTEREST OF AMICUS CURIAE

The Alabama Defense Lawyers Association ("ADLA") is a non-profit association of over 1000 Alabama lawyers who devote a substantial portion of their professional practice to the defense of civil lawsuits. Founded in 1964, ADLA's purpose includes promoting improvement in the administration and quality of justice. Consistent with its stated purposed, the ADLA, by and through its *Amicus Curiae* committee, often participates in cases that involve important questions of law to assist the Court in its consideration and resolution of those cases. ADLA and its undersigned counsel have no pecuniary interest in this case and no professional relationship with the parties.

ALDA is pleased to accept the Court's invitation, as extended by the Clerk's letter dated July 21, 2016, and to submit the following authorities and argument.

STATEMENT OF THE ISSUE

WHETHER AN AUTOMOBILE LIABILITY POLICY ISSUED IN ALABAMA MUST PROVIDE COVERAGE FOR DRIVERS WHO HAVE THE IMPLIED PERMISSION TO USE THE COVERED VEHICLE?

SUMMARY OF THE ARGUMENT

The Motor Vehicle Safety Responsibility Act ("MVSRA") only requires that those "motor vehicle liability policies," as specifically defined therein, that are required to be certified to the Director of Public Safety as proof of financial responsibility after conviction for an offense that would result in loss of license and registration must provide coverage to any person using the vehicle with the "express or implied permission" of the named insured. The MVSRA does not apply to or affect other Alabama automobile liability policies that are not required to be certified as proof of financial responsibility, or require that such policies contain or be subject to specific policy provisions. Accordingly, Alabama courts have for decades recognized that the policy terms required by the MVSRA do not apply to all Alabama automobile liability insurance policies and, consequently, have upheld and enforced automobile liability policies that only extend coverage to drivers using the vehicle with the named insured's express permission.

The language of the Mandatory Liability Insurance Act ("MLIA") plainly precludes any requirement that an

automobile liability insurance policy must provide coverage for drivers who have the implied permission to use the covered vehicle. It is clear that the Legislature knew how to require coverage for impliedly permitted drivers, but chose not to require that coverage in all automobile liability insurance policies under the MLIA. The historical and legal context in which the MLIA was enacted, including (1) the MVSRA's statement that it would not "apply to or affect" liability policies that may in the future be required by law, and (2) the Court's consistent approval of liability policies extending coverage only to expressly permitted drivers, further demonstrates that the Legislature did not intend to require that all automobile liability insurance policies must provide coverage for impliedly permitted drivers.

Finally, the fact that the MLIA and the MVSRA are to be construed *in pari materia* affirms that Alabama policies issued in compliance with the MLIA may validly only insure expressly permitted drivers and does not nullify statutory distinctions or abrogate long-approved policy terms so as to require coverage in all policies for impliedly permitted drivers.

ARGUMENT

Nothing in either the Motor Vehicle Safety-Responsibility Act ("MVSRA"), Ala. Code §§ 32-7-1 *et seq.*, the Mandatory Liability Insurance Act ("MLIA"), Ala. Code §§ 32-7A-1 *et seq.* or in the decisions of this Court require that an automobile liability insurance policy issued in Alabama must provide coverage for drivers who have the implied permission to use the covered vehicle. Rather, as demonstrated briefly below, these statutes and this Court's relevant decision's compel the conclusion that this Court should continue, as it has for decades, to enforce those automobile insurance policies that extend liability coverage to only drivers who have the express permission to use the covered vehicle.

I. THE MOTOR VEHICLE SAFETY-RESPONSIBILITY ACT DOES NOT REQUIRE THAT A POLICY OF AUTOMOBILE INSURANCE PROVIDE LIABILITY COVERAGE TO DRIVERS WHO HAVE THE IMPLIED PERMISSION TO USE THE COVERED VEHICLE UNLESS THE POLICY IS A "MOTOR VEHICLE LIABILITY POLICY" REQUIRED TO BE FILED WITH THE DIRECTOR OF PUBLIC SAFETY AS PROOF OF FINANCIAL RESPONSIBILITY.

The Alabama Legislature in 1951 enacted the MVSRA as Alabama's version of the Uniform Motor Vehicle Safety-Responsibility Act, Act No. 1951-704 (now codified at Ala.

Code §§ 32-7-1 through 43), effective January 1, 1952, rather than an alternative "scheme of compulsory liability insurance," as the "public policy" best suited to address the need for establishing and requiring financial responsibility for owners and operators of motor vehicles involved in accidents in Alabama. *State Farm Fire and Cas. Co. v. Lambert,* 291 Ala. 645, 648, 285 So.2d 917, 918-19 (1973); *Hutcheson v. Alabama Farm Bureau Mut. Cas. Ins. Co.,* 435 So.2d 734, 736 (Ala. 1983). Significantly, and as discussed below, although the Legislature opted for the MVSRA instead of a mandatory liability insurance law, it anticipated that some future law might impose a scheme of mandatory automobile liability insurance, but declared that the MVSRA "shall not be held to apply to or affect" such law. Ala. Code § 32-7-25(a)(Act No. 1951-704, §23(a)).

A. The MVSRA Distinguishes Between "Automobile Liability Policies" that are Generally Valid under Alabama Law if they Contain the Prescribed Minimum Limits of Liability, and "Motor Vehicle Liability Policies" Certified as Proof of Financial Responsibility, which Must Contain and be Subject to Statutorily Prescribed Terms.

The MVSRA is to be "administer[ed] and enforce[d]" by the Director of Public Safety, Ala. Code §§ 32-7-2(1) and

3(a), and "may be said to consist of two parts, one providing for security for injuries and damages resulting from accidents which have already occurred, and the other providing for proof of ability to respond in damages (that is 'Proof of Financial Responsibility') for liability on account of accidents occurring subsequent to the effective date of said proof." *State Farm Mut. Auto. Ins. Co. v. Hubbard,* 272 Ala. 181, 187, 129 So.2d 669, 675 (1961).[1]

The first part of the MVSRA, dealing with the post-accident deposit of "security," provides that a deposit of security is not required if owner or operator of the involved vehicle "had in effect at the time of the accident an **automobile liability policy** with respect to the motor vehicle involved in the accident." Ala. Code § 32-7-6(c)(1) (emphasis added). In *State Farm Mut. Auto. Ins. Co. v. Hubbard, supra,* this Court noted that § 5(c) of Act No. 1951-704, now codified as § 32-7-6(c)(1), does not require a deposit of security if there is in effect at the time of the accident an "automobile liability policy" with

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[1] The MVSRA defines "Proof of Financial Responsibility," in part, as "[p]roof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof." Ala. Code § 32-7-2(10) (§ 1(j) of Act No. 1951-704).

respect to the involved motor vehicle. 272 Ala. at 187, 129 So.2d at 675. Significantly, as this Court "observe[d]" in *Hubbard,* "the **'automobile liability policy'** referred to in § 5(c) [current § 32-7-6(c)(1)] is not the same as a **'motor vehicle liability policy'** referred to in connection with the second part of the Act, that is, 'Proof of Financial Responsibility' with respect to future accidents (see §§ 19 through 21) [current §§ 32-6-20 through 22]." *Id.* (emphasis added).

> The Act contains no definition of an "automobile liability policy," as used in § 5(c), as it does of a "motor vehicle liability policy" (see § 21(a) [current § 32-7-22(a)]). **Nor does the Act provide that an "automobile liability policy" contain certain provisions, nor that such policy shall be subject to certain provisions, although not contained therein, as it does with respect to a "motor vehicle liability policy"** (see § 21(b) through (k) [current § 32-7-22(b) through (k), as amended]).

Id. (emphasis added). So, an "automobile liability policy" in effect at the time of an accident which will avoid the need to deposit security "means simply an automobile liability policy valid under the laws of Alabama and containing the minimum prescribed limits of liability." *Id.*

The second part of the MVSRA deals with the "proof of financial responsibility" that is required of persons who have been convicted of an offense requiring the suspension or revocation of their licenses in order to avoid the suspension of the registrations of their motor vehicles, as provided by Ala. Code § 32-7-18. Such proof of financial responsibility may be provided by filing with the Alabama Director of Public Safety an authorized insurer's "written certificate . . . certifying that there is in effect a **motor vehicle liability policy** for the benefit of the person required to furnish proof of financial responsibility." Ala. Code § 32-7-20(a)(emphasis added).[2] As this Court explained the *Hubbard* case, in contrast to an "automobile liability policy" which avoids the post-accident deposit of security, the "motor vehicle liability policy" is specifically defined as "an owner's or an operator's policy of liability insurance, certified as proof of financial responsibility," Ala. Code § 32-7-22(a), and must contain "certain provisions," including those policy terms required by Ala. Code §§ 32-7-22(b) through

[2] Section 32-7-18(b) provides that "[n]o motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such certificate."

(k). *State Farm Mut. Auto. Ins. Co. v. Hubbard, supra,* 272 Ala. at 187, 129 So.2d at 675. Section 32-7-22(b)(2) provides in relevant part that such a motor vehicle liability policy "[s]hall insure the person named in the policy and any other person, as insured, using any motor vehicle or motor vehicles designated in the policy with the **express or implied permission** of the named insured. . . ." (Emphasis added).

B. The Alabama Legislature and this Court's Decisions Have Consistently Refused to Require that All Automobile Liability Insurance Policies Contain or be Subject to the Policy Provisions that are Statutorily Required for Only Those "Motor Vehicle Liability Policies" Certified as Proof of Financial Responsibility.

The Alabama Legislature has expressly declared that the "proof of financial responsibility" provisions of the MVSRA do not "apply to or affect" all Alabama automobile liability policies, but that such policies may only be certified as proof of financial responsibility only if they "conform to the requirements" of the MVSRA:

> This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this chapter, may

be certified as proof of financial responsibility under this chapter.

Ala. Code § 32-7-25(a).[3] Consequently, this Court's decisions have consistently held that the policy terms mandated by Ala. Code § 32-7-22 apply only to a "motor vehicle liability policy" certified to the Director of Public Safety as proof of financial responsibility, and not to all Alabama automobile liability insurance policies generally. For example, in *State Farm Mut. Auto. Ins. Co. v. Sharpton,* 259 Ala. 386, 66 So.2d 915 (1953), perhaps the first case to consider the effect of the MVSRA on automobile liability insurance policies, this Court agreed that the MVSRA did not "'refer to all policies, but merely to policies required to prevent suspension of license and registration.'" 259 Ala. 389, 66 So.2d at 916 (citations omitted). *See Hutcheson v. Alabama Farm Bureau Mut. Cas.*

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[3] The Legislature has amended portions of the MVSRA at least 12 times since its initial enactment in 1951, but has never sought to impose the requirement that all Alabama automobile liability insurance policies contain or be subject to the policy provisions set for in Ala. Code § 32-7-22. In fact, in what may have been the latest expression of its will on that subject, the Legislature declared that nothing in Act No. 1984-301 "should be construed to abrogate the exclusions, terms, conditions or other provisions of any policy of automobile liability insurance which has been approved by the Insurance Commissioner." Act. No. 1984-301, § 6.

Ins. Co., 435 So.2d 734, 736-37 (Ala. 1983)(quoting *Mooradian v. Canal Ins. Co.*, 272 Ala. 373, 377, 130 So.2d 915, 917 (1961))(the public policy of Alabama, as shown in a line of this Court's decisions, is that liability policy terms required by the MVSRA "'apply only to those insurance policies required to be certified to the Department of Public Safety to continue to be registered,' and avoid loss of license and registration"); *State Farm Mut. Auto. Ins. Co. v. Hubbard, supra,* 272 Ala. at 187, 129 So.2d at 675 (only a "motor vehicle liability policy" certified to the Director of Public Safety as proof of financial responsibility must contain the terms required in current § 32-7-22); *Hill v. Campbell,* 804 So.2d 1107, 1116 n.3 (Ala.Civ.App. 2001)(citing *Hutcheson v. Alabama Farm Bureau Mut. Cas. Ins. Co., supra*)("Section 32-7-22 applies to policies required to be certified as proof of financial responsibility by the Department of Public Safety to permit the vehicle to continue to be registered and to avoid loss of license and registration," and thus "applies only after the operator of the automobile has had a conviction for an offense that required revoking his driver's license").

Because the MVSRA is simply "without influence" on automobile liability insurance policies generally, this Court has consistently rejected invitations to either read the MVSRA's mandatory policy terms into all such policies generally, or to declare the terms of such polices to be repugnant to the MVSRA. *Mooradian v. Canal Ins. Co., supra,* 272 Ala. at 377, 130 So.2d at 917. For example, in *Hutcheson v. Alabama Farm Bureau Mut. Cas. Ins. Co., supra,* 435 So.2d at 736, this Court considered "whether the provisions of § 32-7-22" of the MVSRA "nullify" the "household exclusion" of the automobile liability policy there under consideration. The Court noted that it had "consistently upheld the validity of the household and similar exclusions . . . so long as they do not conflict with statutory law or public policy." *Id.* The Court cited multiple cases upholding such exclusions decided over a span of more than 20 and all after the enactment of the MVSRA, and concluded that the household exclusion was neither repugnant to public policy nor the MVSRA because the policy at issue was not one that was "required to be certified as proof of financial responsibility by the Department of Public Safety." *Id.* at 737. *See State Farm*

Mut. Auto. Ins. Co. v. Hubbard, supra, ("household exclusion" is a valid and enforceable part of an "automobile liability policy" under the MVSRA, which need not contain the requirements of § 32-7-22 for "motor vehicle liability policies" certified as proof of financial responsibility); *Mooradian v. Canal Ins. Co., supra,* (rejecting the argument that MVSRA rendered "passenger hazard excluded" clause unenforceable; MVSRA is "without influence" where policy was not issued as proof of financial responsibility); *State Farm Mut. Auto. Ins. Co. v. Sharpton, supra* (rejecting the argument that current § 32-7-22 "virtually eliminates" an automobile liability policy's cooperation clause because the subject policy was not required to be certified under the MVSRA as proof of financial responsibility).

C. **An Automobile Insurance Policy that Limits the Liability Coverage to Drivers Using the Insured Vehicle with the Named Insured's Express Permission is Valid and Enforceable, unless the Policy is a "Motor Vehicle Liability" Policy Certified as Proof of Financial Responsibility under the MVSRA.**

Since at least as early as 1971, almost 20 years after the effective date of the MVSRA, this Court has

consistently upheld and enforced those Alabama automobile liability insurance policies that extend the liability coverage only to drivers who have the named insured's express permission to use the covered vehicle. *See, e.g., Alfa Mut. Ins. Co. v. Small*, 829 So.2d 743 (Ala. 2002); *Pharr v. Beverly*, 530 So.2d 808 (Ala. 1998); *Alabama Farm Bureau Mut. Cas. Ins. Co. v. Hudson*, 432 So.2d 1208 (Ala. 1983); *Crawley v. Alabama Farm Bureau Mut. Cas. Ins. Co.*, 295 Ala. 226, 326 So.2d 718 (1976); *Alabama Farm Bureau Mut. Cas. Ins. Co. v. Mattison*, 286 Ala. 541, 243 So.2d 490 (1971); *Alabama Farm Bureau Mut. Cas. Ins. Co. v. Government Employees Ins. Co.*, 286 Ala. 414, 240 So.2d 664 (1970). Thus, there can be no question but that these "express permission" policies are "valid under the laws of Alabama," as long as they contain "the minimum prescribed limits of liability. *State Farm Mut. Auto. Ins. Co. v. Hubbard, supra,* 272 Ala. at 187, 129 So.2d at 675). And, consistent with the *Sharpton, Mooradian, Hubbard, Hutcheson* and *Hill* cases discussed above, the "express or implied permission" requirement of § 32-7-22(b)(2) of the MVSRA only applies if and to the extent the policy is a "motor vehicle liability policy" required to be certified to the

Director of Public Safety as proof of financial responsibility under Ala. Code §§ 32-7-18 through 22.

II. THE MANDATORY LIABILITY INSURANCE ACT DOES NOT REQUIRE THAT AN AUTOMOBILE LIABILITY INSURANCE POLICY MUST PROVIDE COVERAGE FOR DRIVERS WHIO HAVE THE IMPLIED PERMISSION TO USE THE COVERED VEHICLE.

As noted above, when it originally enacted the MVSRA, the Alabama Legislature anticipated that there might thereafter be "other law" requiring "policies of automobile insurance against liability" as to which the MVSRA "shall not be held to apply to or affect." Ala. Code § 32-7-25(a)(Act No. 1951-704, §23(a)). The adoption some 50 years later of the MLIA is such "other law," and the "express or implied permission" requirement of the MVSRA for "motor vehicle liability policies" certified thereunder as proof of financial responsibility cannot be "held to apply to or affect" all Alabama policies issued pursuant to the MLIA.

A. <u>The Language of the MLIA Plainly Precludes any Requirement that an Automobile Liability Insurance Policy Must Provide Coverage for Drivers who have the Implied Permission to Use the Covered Vehicle</u>.

It is well settled that courts are duty-bound to enforce the Legislature's intent as clearly expressed in a

statute, and where the language of the statute is clear "'then there is no room for judicial construction and the clearly expressed of the legislature must be given effect.'" *Givianpour v. Curtain,* 166 So.3d 662, 667 (Ala. 2014)(quoting *Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen,* 714 So.2d 293, 296 (Ala.1998) and *IMED Corp. v. Systems Eng'g Assocs. Corp.,* 602 So.2d 344, 346 (Ala.1992)). Consequently, the "'judiciary will not add that which the legislature choose to omit.'" *Ex parte Coleman,* 145 So.3d 752, 758 (Ala. 2013)(quoting E*x parte Jackson,* 614 So.2d 405, 407 (Ala. 1993)). The plain language of the MLIA clearly forecloses any notion that the Legislature intended to require that all automobile liability insurance policies issued in Alabama must provide coverage for drivers who have the owner's implied permission to use the covered vehicle.

The MLIA is administered and enforced by the Alabama Department of Revenue, rather than by the Director of Public Safety as is the MVSRA. *See* Ala. Code §32-7A-2(6) and § 32-7A-3(a). The MLIA provides, in relevant part, that:

> [n]o person shall operate, register, or maintain registration of, and no owner shall permit another

> person to operate, register, or maintain registration of, a motor vehicle designed to be used on a public highway unless the motor vehicle is covered by a liability insurance policy, a commercial automobile liability insurance policy, motor vehicle liability bond, or deposit of cash.

Ala. Code § 32-7A-4(a). The MLIA defines "liability insurance policy" as "[a]n owner's or an operator's personal automobile liability insurance policy, issued by an insurance carrier duly authorized to transact business in this state," Ala. Code §32-7A-2(11), and mandates **only** that such a "liability insurance policy. . . shall be issued in amounts no less than the minimum amount set forth for bodily injury or death and for destruction of property under Section 32-7-6(c)." Ala. Code §32-7A-4(b)(1).[4] With respect to "motor vehicle liability bonds," the MLIA provides, in relevant part, that:

> [t]he bond shall be conditioned upon the payment of the amount of any judgment rendered against the principle in the bond or any person responsible for the operation of the principle's motor vehicle with his **express or implied consent**, arising from injury, death or damage sustained through the use, operation, maintenance, or control of the motor vehicle within the state of Alabama.

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[4] The "minimum amounts" provided by § 32-7-6(c) are $25,000 for bodily injury or death to one person, $50,000 because of bodily injury to or death of two or more persons in one accident, and $25,000 for property damage.

Ala. Code §32-7A-4(b)(2)(emphasis added). Finally, the MLIA defines "deposit of cash" as:

> [f]unds deposited with and held by the State Treasurer as security for payment by the depositor, or by any person responsible for the depositor's motor vehicle with his or her **express or implied consent**, of all judgments surrendered against the depositor or otherwise operator and the depositor's motor vehicle from injury, death, or damage sustained thought the use, operation, maintenance, or control of the motor vehicle within the State of Alabama.

Ala. Code §32-7A-2(7)(emphasis added).

Even a cursory review of the statutory language shows that the Legislature knew how require that "coverage" be extended to persons using automobile "with express or implied consent," and yet clearly chose to require that "coverage" only for "motor vehicle liability bonds" and the "deposit of cash." As to the mandatory "liability insurance policy," the Legislature's only requirements are that such policy be issued by a duly authorized insurer, and that it have the prescribed minimum limits of liability. Respectfully, a court must not add the "express or implied consent" requirement to automobile liability insurance policies mandated by the MLIA where the Legislature has not chosen to do so. *See Ex parte Coleman, supra.*

B. <u>The Historical and Legal Context in which the MLIA was Enacted Demonstrates that the Legislature did not Intend to Require that an Automobile Liability Insurance Policy Must Provide Coverage for Drivers who have the Implied Permission to Use the Covered Vehicle</u>.

"It is an ingrained principle of statutory construction that '[t]he Legislature is presumed to be aware of existing law and judicial interpretation when it adopts a statute,'" so that, where construction is necessary, it may be informed by the context in which the statute was passed. *See Ex parte Ford Motor Company*, 73 So.2d 597, 603 (Ala. 2011)(quoting *Carson v. City of Prichard*, 709 So.2d 1199, 1206 (Ala. 1998) and *Ex parte Louisville & N.R.R.*, 398 So.2d 291, 296 (Ala. 1981)). A corollary to this rule is that in attempting to determine the legislative intent for a statute, a court may "'look to the law as it existed prior to such statute's enactment.'" *Ex parte L.J.*, 176 So.3d 186, 191 (Ala. 2014)(quoting *Pinigis v. Regions Bank*, 977 So.2d 456, 451 (Ala. 2007) and *Reeder v. State ex rel. Myers*, 294 Ala. 260, 265, 314 So.2d 853, 857 (1975)).

As shown above, prior to the enactment of the MLIA, effective June 1, 2000, there was a substantial body of existing law that applied the policy terms required by the MVSRA only to "motor vehicle liability policies" required

to be certified thereunder as "proof of financial responsibility," and otherwise respected and enforced the provisions of other automobile liability policies not so certified. And, for the almost 30 years preceding the MLIA, this Court had upheld and enforced automobile liability policies that extended the liability coverage only to drivers who have the named insured's express permission to use the covered vehicle.

Additional context is supplied by the Alabama Legislature's first adoption of a system of mandatory automobile liability insurance in 1999 with its passage of Act No. 1999-430, effective June 1, 2000, which added § 32-7-6.1 to the Code of Alabama. Section 32-7-6.1 was short-lived in that it was expressly repealed effective January 1, 2001 when the Legislature enacted the MLIA by Act No. 2000-554. But during its six-month existence, § 32-7-6.1 required that as a pre-condition to registering or licensing a vehicle must be covered by a "motor vehicle liability policy," as defined therein. Act No. 1999-430, § 2(a); § 32-7-6.1(a). Section 32-7-6.1(b) largely copied, in many instances almost *verbatim*, its definition of the mandatory "motor vehicle liability policy" from §§ 32-7-

22(b)(1), (b)(2), (d) - (f), (h) and (k) of the MVSRA as it existed in 1999 (prior to the amendments by Act Nos. 2008-393 and 2011-688). Significantly however, where § 32-7-22(b)(2) of the MVSRA requires that a policy insure "the person named in the policy" and any other person using the subject vehicle with the "express or implied permission" of the named insured, § 32-7-6.1(b)(3) (Act No. 1999-430, § 2(b)(3)) required only that the mandatory "motor vehicle liability policy" insure "the person named and any other person covered under the policy." Thus, in its initial foray into a system of compulsory automobile liability insurance, the Legislature **did not** require that the automobile liability provide coverage for drivers who have the implied permission to use the covered vehicle.

In *Alfa Specialty Ins. Co. v. Jennings*, 906 So.2d 195, 200 (Ala.Civ.App. 2005)(Murdock, J.), the Court of Civil Appeals held that a "criminal acts" exclusion in an automobile liability insurance policy did not violate either Alabama public policy or the MLIA, in part because it was "apparent that the legislature contemplated that there would be 'circumstances' as to which . . . the motor-

vehicle liability insurance policy contemplated by § 32-7A-4(b)(1) would [not] provide coverage."

> The fact that the legislature contemplated that there would be "circumstances" as to which the motor-vehicle liability insurance policies under the MLIA would not provide coverage is not surprising. **The MLIA was enacted by the legislature against the backdrop of a substantial body of existing law governing automobile liability insurance policies issued in this state, including caselaw, statutes, and regulations.** Further, § 32-7A-22 [now § 32-7A-25] provides that the MLIA is to be construed *in pari materia* with other laws. Among the laws in place when the MLIA was enacted was § 27-14-8, Ala. Code 1975, pursuant to which provisions of insurance policies, including policies of the nature at issue in the present case, must be approved by the Commissioner of Insurance. It is in this context that we recognize that the MLIA was enacted so as to require otherwise financially irresponsible drivers to maintain automobile liability insurance **of the nature theretofore normally and routinely maintained by responsible drivers in the state. To conclude otherwise would require us to construe the MLIA as having been intended to abrogate exclusions, terms, conditions and other insurance-policy provisions that theretofore have met with approval under Alabama law, including approval by the Commissioner of Insurance, and that were contained in liability insurance policies in force throughout Alabama at the time of the enactment of MLIA.**

Id. at 200-01 (emphasis added). The Court of Civil Appeals concluded that a criminal acts exclusion which had been upheld and enforced by this Court some 10 years prior to

the effective date of the MLIA was valid and enforceable notwithstanding the intervening enactment of the MLIA.

Considering that automobile liability policies insuring only expressly permitted drivers had been upheld and enforced by this Court's decisions for at least 30 years prior to the enactment of the MLIA, and the Legislature's refusal in the almost 65 years since the MVSRA became effective (on January 1, 1952) to require coverage for impliedly permitted drivers, except in "motor vehicle liability policies" required to be certified as proof of financial responsibility under the MVSRA, compels the conclusion that the MLIA was not intended and did not require that an automobile policy issued in Alabama must provide coverage for drivers who have the implied permission to use the covered vehicle.

C. Construing the MVSRA and the MLIA *In Pari Materia* Affirms that Automobile Liability Insurance Policies May Provide Coverage to Only Drivers Who Have the Express Permission to Use the Covered Vehicle.

At the time of the 2010 automobile accident at issue in this appeal, the MLIA provided that "[t]his chapter is supplemental to other laws relative to motor vehicles and

financial responsibility, and insofar as possible shall be construed in pari materia with such laws." Ala. Code § 32-7A-22.[5] Construing related "supplemental" statutes *in pari materia* simply means that they should be "construed together to ascertain the meaning of each," *Jefferson County v. Weinrib,* 36 So.3d 508, 512 (Ala. 2009), "in order to avoid conflicts and to give each statutory provision a field of operation." *McGuire v. Rogers,* 794 So.2d 1131, 1137 (Ala.Civ.App. 2000).

The relevant aspects of the MSVRA and the MLIA each have a "field of operation" and can coexist harmoniously, in that MVSRA only mandates the "express or implied permission" provision in "motor vehicle liability policies" as specifically defined therein, while the MLIA mandates only that a "liability insurance policy" be issued by an authorized insurer and contain the prescribed minimum coverage limits. Thus, construction *in pari materia*

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[5] Act No. 2011-688 repealed § 32-7A-22 and replaced it with § 32-7A-25, effective January 1, 2013. Although current § 32-7A-25 would not appear to apply to this appeal, it provides that "[t]his chapter is supplemental to other laws relative to motor vehicles and a liability insurance policy, commercial automobile liability insurance policy, liability insurance bond, or deposit of cash, and insofar as possible shall be construed in pari materia with such laws."

affirms rather than "abrogate[s]" automobile liability policy "exclusions, terms, conditions and other insurance-policy provisions," including policies that insure only expressly permitted drivers, that had previously been approved and accepted under Alabama law. *Alfa Specialty Ins. Co. v. Jennings, supra*, 906 So.2d at 201.

CONCLUSION

For the reasons discussed above, *Amicus Curiae* Alabama Defense Lawyer's Association respectfully submits that Alabama law does not require that an automobile liability policy issued in Alabama must provide coverage for drivers who have the implied permission to use the covered vehicle, unless the policy is one that must be certified as proof of financial responsibility after conviction for an offense that required loss of license and registration.

Respectfully submitted,

/s/ Mark D. Hess

Mark D. Hess (HES006)
Attorney for *Amicus Curiae*
Alabama Defense Lawyers
Association

Of Counsel:
HAND ARENDALL, LLC
2001 Park Place North, Suite 1200
Birmingham, AL 35203
Phone: (205) 324-4400
E-mail: mhess@handarendall.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon all counsel of record and pro se parties listed below both electronically via e-mail and by placing a copy of the same in the U.S. Mail, first class postage pre-paid and properly addressed as follows, this the 14th day of September, 2016:

W. Cone Owen, Jr.
SMITH ALSPAUGH OWEN, P.C.
1100 Financial Center
505 20th Street North
Birmingham, AL 35203
cowen@smithalspaugh.com

Joe C. Cassady, Jr.
CASSADY & CASSADY, LLP
P.O. Box 311730
Enterprise, AL 36331
joecjr@entercomp.com

M. Kathleen Miller
Latisha Rhodes Davis
S. Gaillard Ladd
ARMBRECHT JACKSON LLP
P.O. Box 290
Mobile, AL 36601
mkm@ajlaw.com
lrd@ajlaw.com
sgl@ajlaw.com

L. Merrill Shirley
Griffin M. Shirley
SHIRLEY LAW OFFCE
431 North Court Street
P.O. Box 408
Elba, AL 36323
merrill@shirleylawoffice.com
griffin@shirleylawoffice.com

/s/ Mark D. Hess
Mark D. Hess (HES006)
Of Counsel