

No.

**In the
Supreme Court of the United States**

ALLAN M. LEAVITT,
Petitioner,

v.

CYNTHIA A. PHILLIPS,
MELISSA AEBERSOLD,
THE COMMERCE INSURANCE COMPANY,
“GEICO” INSURANCE COMPANY,
UNITED SERVICES AUTOMOBILE ASSOCIATION,
Respondents.

On Petition for Writ of Certiorari to the
Massachusetts Supreme Judicial Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Did Massachusetts deprive a Vermont citizen the fundamental right to property without a compelling state interest by *refusing* to enforce its substantive and procedural laws where there exist unresolved disputes as to the *Massachusetts statute (he plead it requires Massachusetts Personal Injury Protection ((PIP)) on non-resident vehicles which insurers deny)* and *Vermont contracts (he plead they promise Massachusetts PIP which insurers deny)*, when the Judiciary, while conceding both of Petitioner's pleas are the law, **refused to declare the law**; and instead forced an interpretation of *disputed* law and contracts on him in summary judgments, without declaration of statute or contract, depriving him, and no others similarly situated, of the protections of both law and contracts?

2) Did Massachusetts violate Article IV when it refused to declare whether, under Vermont contract law, there were breaches of Vermont contracts?

3) Is M.G.L. ch. 231A unconstitutional or unconstitutional as exercised?

LIST OF PARTIES

- 1) Allan M. Leavitt, Petitioner
- 2) Cynthia A. Phillips, Respondent
- 3) Melissa Aebersold, Respondent
- 4) The Commerce Insurance Company, Respondent
- 5) “GEICO” Insurance Company, Respondent
- 6) United Services Automobile Association, Respondent

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On Petition for Writ of Certiorari to the
Massachusetts Supreme Judicial Court

Petitioner, Allan M. Leavitt, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Massachusetts Appeals Court (App.Ct.) where discretionary Application for Further Appellate Review (FAR) was denied on October 18, 2019 by the Massachusetts Supreme Judicial Court (SJC).

OPINIONS BELOW

The (non-precedential) opinion of the App.Ct., *Leavitt v. Phillips*, 95 Mass. App.Ct. 1125 (2019), is included in Petitioner Appendix 4 - 12 (PA 4-12).

JURISDICTION

Jurisdiction of the Supreme Court of the United States is found in 28 U.S.C. § 1257 as it involves “final judgments or decrees rendered by the highest court of” Massachusetts (Mass.) “where the validity of” Mass. statute “is drawn in question, etc. and the Constitution of the United States, Amendment Fourteenth (14th Amendment) which provides “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;” and Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause, provides that states within the United States have the duty to respect the "public acts, records, and judicial proceedings of every other state." The date the order sought to be reviewed was entered October 18, 2019. Rule 14(e) (i).

NOTIFICATION UNDER 29.4(c) THAT 28 U. S. C. § 2403(b) MAY APPLY

Notification under Supreme Court of the United States Rule 29.4(c) that this case involves a proceeding in this Court in which the constitutionality of the Mass. statute is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, and that 28 U. S. C. § 2403(b) may apply and notice has been served on the Attorney General of the Commonwealth of Mass. and pursuant to 28 U. S. C. § 2403(b), and this certifies that to the best of Petitioner's understanding that the Mass. Court has not certified to the State Attorney General the fact that the constitutionality of M.G.L. ch. 231A was drawn into question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, 14th Amendment.

The Equal Protection Clause provides:

nor shall any State....deny to any person within its jurisdiction the equal protection of the law.

The Due Process Clause provides:

No person shall...be deprived of ... property, without due process of law.

Constitution of the United States, Article IV.

The Full Faith and Credit Clause of Article IV provides that states within the United States have the duty to respect the public acts, records, and judicial proceedings of every other state.

M.G.L. ch. 231A, §§ 1 - 3 provide:

Section 1. The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought ...

Section 2. The procedure under section one may be used to secure determinations of right, duty, status or other legal relations under deeds, wills or written contracts or other writings constituting a contract or contracts or under the common law, or a charter, statute, municipal ordinance or by-law, or administrative regulation, including determination of any question of construction or validity thereof...

Section 3. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons. The reasons for such refusal shall be stated in the record.

M.G.L. ch. 90, §§ 3 and 34A:

These sections are quoted in Summary Judgments at PA 13 - 33.

PREFACE

What follows is a true story. It involves a **Landmark Legal Discovery**. To understand what occurred requires the suspension of disbelief that such a great Discovery which protects children would be suppressed. But it was. It is a story of how the exercise of law was used to suppress truth. And validates the axiom that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” *Abrams v. United States*, 250 U.S. 616, 630, 40 S.Ct. 17, 63 L.Ed. 1173 (1919).

The Judiciary, at the Respondents' request, *refused* to declare (enforce) the plain meaning of the statute as written by the Legislature in 1971 (the law).¹ There was no “reason” for “refusal” to declare the law though a “reason” for “refusal” *was* required to be “stated in the record.” Of course, it was not. And though pleas that [1] the statute requires PIP on non-resident vehicles and [2] policies of liability insurance provide those coverages are disputed by the Respondents, they were not disputed by the Judiciary.

Suppression of Petitioner's right to a declaration of the law is the only lens through which procedural history here can be comprehended. And the reasons why this matter must be sent back to Mass. for declaration should focus on the rule of law as well as the “welfare” and “safety” of children whom the Legislature intended to protect. And why it is the Judiciary's “unflagging obligation” to exercise jurisdiction conferred.

¹ Changes the “right(s), dut(ies), status and other legal relations” of *all* Parties. M.G.L. ch. 231A, § 1.

INTRODUCTION

Mass. statute has required *non-resident* motor vehicle owners to maintain PIP provisions as part of their policy of *liability* insurance. Since 1971. A fact undiscovered for half a century. Until now. The Insurers disagree. And although the *Court* agrees the statute requires PIP on non-resident vehicles and policies provide PIP, it *refused* Petitioner's right to declare the law without "reason(s)" "stated in the record." It *refused* to provide reasons for not providing "reasons."

Though this **Landmark Legal Discovery** is a matter of first impression, public interest,² involves constitutional issues, changes the entire statutory scheme involving non-resident vehicles, affects claims against every Respondent, an *undeclared* interpretation of the *disputed* meaning of the statute was forced on Petitioner in summary judgments, without declaration, depriving him, and no others similarly situated, of protections of the *undeclared* statute. The Judiciary held its Ruling is not binding precedent.

The questions on appeal involve whether one state can deprive the fundamental right to property interests (in auto insurance contracts) to citizens of other states when it *refuses* to declare disputed (statutory and contract) law where there is no compelling state interest, whether *refusing* to "honor" contracts entered into in other states violates Article IV, and whether M.G.L. ch. 231A is unconstitutional or unconstitutional as exercised.

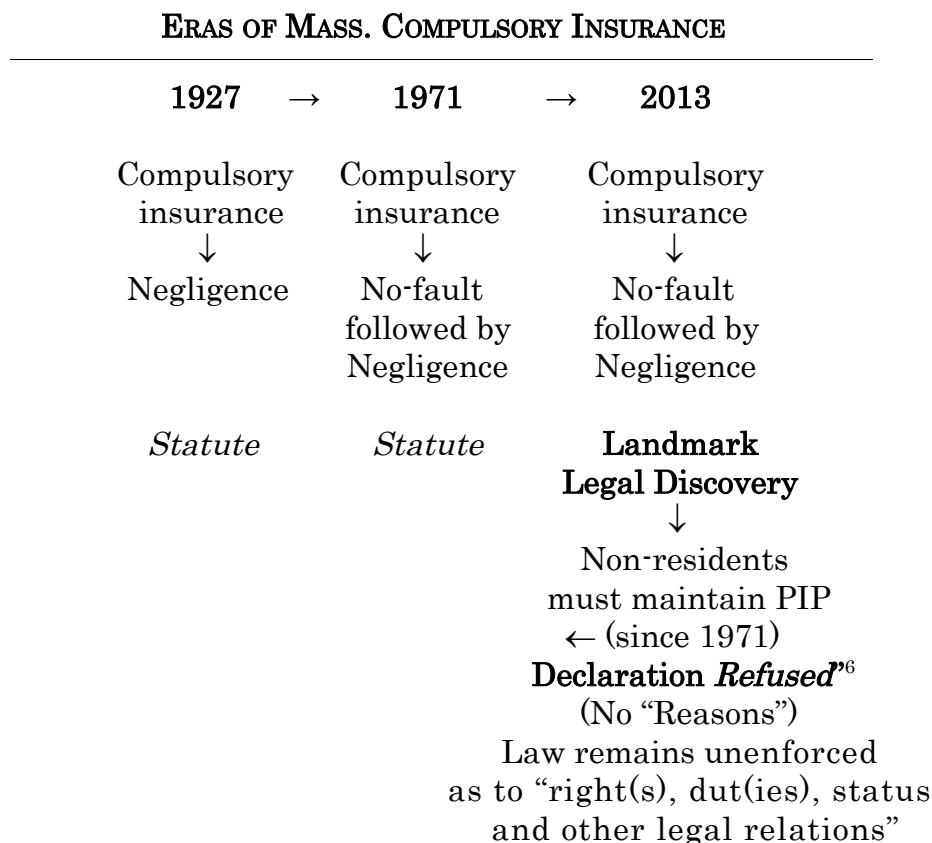
² Since suit was filed, almost 48,000 people have been denied PIP protections. They include children.

STATEMENT OF THE CASE

I. MASS. COMPULSORY AUTO INSURANCE LAW

A brief history of Mass. compulsory auto insurance law follows to enforce the principle that it is a Court's “unflagging obligation to exercise the jurisdiction given to them”³ to declare the law because a person is “entitled to know and be granted their rights, whatever they might be”⁴ even if “not entitled to the relief sought.”⁵

There are three major eras of Compulsory auto insurance in Mass.:



³ *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

⁴ *Cantell v. Commissioner of Correction*, 87 Mass.App.Ct. 629, 636, 33 N.E.3d 1255 (2015).

⁵ *Somerset Importers, Ltd. v. Alcoholic Beverages Control Commission*, 28 Mass.App.Ct. 381, (1990) quoting *Building Inspector of Falmouth v. Haddad*, 369 Mass. 452, 461, 339 N.E.2d 892 (1976).

⁶ As a direct result of the “refusal” to declare the law (without “reason”), over twenty people per day are injured, entitled to, and deprived of these protections guaranteed by statute since 1971.

A. 1927: Negligence.

In 1927, Mass. was the first state to make “compulsory” the maintenance of automobile liability insurance to compensate for damages resulting from *negligence*. This law represented a “deliberate legislative design for the promotion of human welfare and public safety.” *O’roak v. Lloyds Casualty Company*, 285 Mass. 532, 536 (1934). The “dominant purpose is to make provision for security in the collection of compensation for damages sustained without fault...” *O’roak*, 535.

B. 1971: No-fault → Negligence.

In 1971, due to the rising cost of insurance and growing number of law suits, Mass. was the first state to enact [1] *no-fault* insurance requiring PIP protections for injuries as the right to sue for pain and suffering was abrogated. However, once a monetary or injury severity threshold is met, a [2] *negligence suit may be brought* for pain and suffering. PIP payment was without regard to fault (“quick and efficient”).⁷

C. 2013: Landmark Legal Discovery.

Suit plead Mass. statute requires *non-resident* motor vehicle owners to maintain PIP provisions on their policies of liability insurance. A declaration was *refused*. The 1971 statutory scheme remains undeclared. The good news is that Mass. statute protects you with PIP on your liability policy when in Mass. The bad news is the Mass. Judiciary *refuses* to “honor” your contract.

⁷ *Pinnick v. Cleary*, 360 Mass. 1, 22, 271 N.E.2d 592 (1971).

II. DECLARATION *REFUSED* WITHOUT “REASON(s)” - NO COMPELLING INTEREST

Petitioner's right to a declaration was *refused* and never addressed by the Court though plead then demanded for six years.⁸ Right to a declaration was *refused* having been “DENIED” without comment on April 22, 2015 (though filed on December 9, 2014 it remained undocketed 134 days). No “reasons” were “stated in the record” for “refusal.”⁹ The App.Ct. Ruling acknowledges Petitioner's *right* to a declaration of law. PA 8. He Plead the Court declare [1] M.G.L. ch. 90, § 3 requires PIP on non-resident vehicles, [2] Policies of liability insurance provide those coverages, [3] “...on more than thirty days in the aggregate in any one year” means exactly what it says, and [4] That the object of M.G.L. ch. 90, § 3 is the “owner” of non-resident vehicles who must maintain liability coverage; not the “vehicle.” However,

Though *agreeing* with 1 and 2 above, the Court *refused* declaration. And though *disagreeing* with Petitioner's averments relative to 3 and 4, it *refused* declaration. There was no right to be heard as declaration “*refused*.”

After filing in 2013, “GEICO” and USAA moved, by oral motion without notice, to stay all discovery against them as they wanted to proceed with Summ. Judg.s. Petitioner objected. No motions were required. No objections

⁸See the attached Ruling. Right to a declaration is never addressed nor are the rights under the Vermont contracts as a result of the failure to investigate coverage he properly plead.

⁹ If Respondents legitimately disputed Petitioner's claims that M.G.L. c. 90, § 3 does not require PIP on non-resident motor vehicles, and if liability do not promise PIP, and if a declaration of law was not obligatory under M.G.L. ch. 231A, § 3, the Respondents and Court would have addressed Petitioner's averred rights in 2013 [1] *by way of a declaration of law* or [2] *to a declaration of law* with “reasons” “stated in the record.” That would have “terminate(d) the uncertainty or controversy” and resolved all “right(s), dut(ies), status and other legal relations” of the remaining claims which went to trial.

from other Respondents. The Court granted their requests. There is no discovery against “GEICO”/USAA. However, the Court allowed Summary Judgments (Summ. Judg.) to go forward.¹⁰ The Summ. Judg. and App.Ct. Rulings reference contracts that remain in dispute having been denied in discovery. How could a fact-dependent motion be allowed to go forward without agreed-upon undisputed facts? And why is the law not declared?

“GEICO”/USAA then filed Summ. Judg.s when no facts as to whether Aebersold or Petitioner were in Mass. “on more than thirty days in the aggregate in any one year” (“thirty days”), what “vehicles” were involved, etc. and there were no affidavits submitted by insurers containing alleged undisputed facts regarding “thirty days” and “vehicle.”

The Court “found” the meaning of “thirty days” and “vehicle”¹¹ as used in the statute without declaring that meaning the law. PA 13-33. Applying *disputed law to disputed facts*,¹² the Court dismissed Petitioner's claims for PIP, breach of contract, and bad faith against “GEICO”/USAA based on the *undeclared* meaning of “thirty-days” and “vehicle” depriving Petitioner and no others similarly situated. And though acknowledging the statute requires PIP and policies provide PIP (which changes the understanding of the statutory scheme applicable to all Parties including Aebersold, Phillips, The

¹⁰ Over repeated objections by Petitioner that Declaratory Judgment must precede Summ. Judg.

¹¹ Petitioner urged the Court to consider the aim of the Legislature (*O’roak*) as required by law (*Sullivan v. Town of Brookline*, 435 Mass. 353, 360, 758 N.E.2d 110 (2001)) when determining the meaning of “thirty days” and “vehicle” in M.G.L. ch. 90, § 3. There was never a reference to the aim of the Legislature by the Respondents or any Court pertaining to the meaning of these words.

¹² Summ. Judg. standards require application of *undisputed law to undisputed facts*.

Commerce Insurance Company, and remaining underinsured motorist bodily injury claims against “GEICO” and USAA), the Court *went forward without declaring the proper statutory scheme applicable to these remaining Parties, without determining the “right(s), dut(ies), status and other legal relations”¹³ of those Parties under the 1971 law, and without “terminat(ing) the uncertainty” as to those claims* - as if the discovery of the true meaning of the statute plead by Petitioner never occurred. Was never plead.

In fact, just prior to trial Petitioner moved the Court to resolve the statutory scheme (“*right(s), dut(ies), status and other legal relations*”) as against Phillips, Aebersold, etc. The request was to resolve: (1) Petitioner's entitlement to PIP and its affect on the claims of these remaining Defendants, (2) the tort threshold to be applied in light of the newly discovered statutory scheme, (3) the issue of PIP wages, and (4) the impact on Petitioner's claims in light of the newly understood statutory scheme, etc. On the first day of trial the following endorsement appeared: “DENIED.” A statutory scheme conceded in Summ. Judg.s (PA 13-33) not to be the law, was, at trial, forced on Petitioner's claims. When raised on appeal, these errors went unaddressed. Adjudication went forward on a statutory scheme that has never existed in law. The Court and Respondents knew it was not the law.¹⁴ *All Petitioner's claims remain un-adjudicated under the 1971 law.*

¹³ The details of the global changes in duties and obligations of the Parties as a result of the Discovery of the proper statutory scheme are not listed here. The “unflagging obligation” of the Judiciary to declare those relations is conspicuously absent the Mass. proceedings for over six years.

¹⁴ The unresolved statutory scheme was unaddressed on Application for FAR. It was ignored.

The 1971 law remains *unenforced* as the Court will not declare the law.

Neither the Respondents nor the Court ever denied Petitioner's claim that he has a *right* to a declaration of law¹⁵ that the statute requires and policies provide PIP and that it was suppressed. They never deny that such “refusal” deprives him of due process and his property interest.

No Respondent or Court claimed there was no need to declare the law.

No Respondent or Court denied a declaration that the statute requires PIP on non-resident vehicles would “terminate the uncertainty.”

No Respondent or Court denied a declaration that out-of-state liability policies promise PIP would “terminate the uncertainty.”

No Court “stated in the record” a “reason,” (justification, or excuse) for “refusal” of a declaration of any of these propositions.

The App.Ct. *refused* to address these disputed threshold issues:

I. Does Massachusetts law G.L. c. 90, § 3 require non-resident motor vehicle owners to “maintain” liability insurance as defined in G.L. c. 90, § 34A which includes PIP?

II. Do the “GEICO” and USAA automobile liability insurance policies provide PIP provisions under the “out-of-state” coverage clause of their respective insurance contracts?

III. [a] Did the Court violate Leavitt's rights of due process and equal protection by refusing to declare the disputed law and disputed insurance contract; [b] Was it error to rule on a summary judgment without first declaring the disputed law and disputed insurance contract; *and* [c] Did the Court engage in the taking of a property right under contract without the due process of law?

¹⁵ Neither the Court nor the Respondents ever reference G.L. ch. 231A despite Petitioner claiming declaration as of right. *See* Rulings in PA 4 – 33. SJC refused to review the Petitioner's claim to a right to a declaration of law affecting a fundamental property interest.

The App.Ct. Ruling (PA 4) was decided under rule 1:28 which permits a Court to issue a non-precedential ruling where “**no substantial question of law is presented by the appeal** or that some clear error of law has been committed which has injuriously affected the substantial rights of an appellant.” *Emphasis added*. It does not mention the Complaint plead for declaration of law. But clearly in this case, the issue pertaining to whether the statute requires PIP on non-resident vehicles, policies of liability insurance provide those coverages, the statute's meaning relative to “thirty days” and “vehicle” (in addition to the above three issues) do raise substantial questions of law, are matters of first impression, involve public interest, and constitutional issues.¹⁶ The findings of the meaning of “thirty days”/“vehicle” are not binding-precedent and cannot be used as authority. The Summ. Judg. and App.Ct. Rulings on these words was forced on Petitioner depriving him, and no others similarly situated, of his property interest under contracts and never discussed Petitioner's rights under Vermont contract law whether there was a breach by “GEICO” or USAA.¹⁷

The App.Ct. never addressed the issues raised on appeal pertaining to

¹⁶ Mass. Rules of Appellate Procedure 11(a), 1 – 3 provide for “direct appellate review” by the SJC where issues before the court involve first impression, involve public interest, or constitutional issues. The SJC never transferred this case on appeal *yet the claims here are not for the extension, modification, or reversal of existing law. They are the law*. Since 1971, “GEICO”/USAA insure around 27.5 million policyholders. They never moved for declaration of law informing policyholders of their rights. Despite their denial the statute requires PIP and that policies provide PIP. They are still not paying PIP nor has the Court required them to pay. For anyone. Including children. They still deny the statute requires PIP and deny that PIP is a liability coverage. There is no declaration from the Court requiring them to pay PIP to anyone including Petitioner who travels into Mass. regularly.

¹⁷ The App.Ct. applied Mass. law to Vermont contracts to justify denial of Petitioner's attorney fees (PA 8) and refused to address breach of contract claims under Vermont law for failure to investigate.

the dismissal of USAA on the basis of the non-declared meaning of “vehicle.”

In brief, the breach of contract claims against “GEICO” and USAA were never adjudicated under Vermont law. Not in Sup.Ct., the App.Ct., or SJC.

Thereafter, the SJC denied FAR¹⁸ where they were requested to address the claim that *due process and equal protection rights were violated* by “refusal” to declare the law law which prevents the Court's application of interpretations to Petitioner alone. The SJC *refused* to identify where in the proceedings Petitioner rights were “properly declared,”¹⁹ *refused* to confirm that the Petitioner's rights were not *refused* as contemplated by M.G.L. ch. 231A, § 3, and *refused* to declare “thirty-days” and “vehicle” are the law.

Confused?²⁰ With no declaration here, what coverages are required of you when you travel into Mass.? Petitioner certainly does not know. And he travels into Mass. regularly. He has family in Mass. A forced six year battle through legal proceedings that are not the 1971 law leaves little doubt why there are no “reasons” “stated in the record” for “refusal” to declare law.

This **Landmark Legal Discovery**, fifty years in the making, turned out to be the easy part. The hard part is to have the clear meaning of the statute resolved by way of the only procedure available regarding disputes related to the meaning of the statute and contracts. Namely, A declaration of law.

¹⁸ It is believed the SJC knew, approved, or ordered suppression of a declaration of law. It knew of this **Landmark Legal Discovery** in 2016 (by Mandamus) and perhaps as far back as 2014.

¹⁹ How could his rights be “properly declared” if he had no right to be heard on declaration? How “properly declared” if adjudicated under a statutory scheme (i.e. law) that never existed?

²⁰ You wouldn't be if you heard the motion for declaration of law. But it was suppressed.

REASONS FOR GRANTING THE PETITION

REASON 1: DEPRIVATION OF THE FUNDAMENTAL RIGHT TO PROPERTY

A. Without Declaration There Are No Rights. Refusal To Declare The Law Equals A Refusal To Enforce The Law.

Mass. deprives citizens of other states of the fundamental right to a property interest by *refusing* to declare disputed Mass. law and Vermont contract law where there is no compelling state interest under the strict scrutiny test.²¹

Petitioner, a Vermont citizen, was deprived of both substantive and procedural laws where there exist unresolved disputes as to the **Mass. statute** (*he plead it requires PIP on non-resident vehicles but insurers deny*) and **Vermont contracts** (*he plead the insurers' contracts promise PIP but insurers deny*), when the Judiciary, while conceding both of Petitioner's pleas are the law, ***refused to declare the law***; and instead forced an interpretation of disputed law and contracts on him in summary judgments, without declaration of statute or contract, depriving him, and no others similarly situated, of the protections of both law and contracts. “Refusal” is limited.”²²

1. No “Reasons” “Stated In The Record.”

This Court should anticipate Respondents providing “reasons” the law

²¹ Petitioner has a right to “terminate the uncertainty” here, and in future when entering Mass. And once the Court declares PIP is required on non-resident vehicles, the underlying contract count must be addressed by the Court to determine if there was a breach. But it remains un-adjudicated.

²² i.e. declaration does not “terminate the uncertainty” or “other sufficient reasons.” The importance of the language is not *if* the Court's obligation is to declare the law, but *when*. “Refusal” to declare law *perpetuates* uncertainty every time Petitioner travels to Mass.. The opposite of the words of the statute. M.G.L. ch. 231A, § 3. But uncertainty would be terminated by declaration here. And in future cases. But as you read this, he does not know his “right(s), dut(ies), status...” at this time.

was not declared as required²³ and specified by M.G.L. ch. 231A, § 3. Should they provide an opposition brief.²⁴ Rule 15.1. They should provide a reason there was no “reason” “stated in the record why the law was not declared. Or, if they claim his rights were “properly declared,” they should identify where his right is declared that [1] the statute requiring PIP on non-resident vehicles and whether the failure to investigate was a breach under Vermont law, [2] policies of liability insurance issued by “GEICO” and USAA provide those coverages as required under Vermont law entitling him to damages, and [3] his claim for breach of contract was declared under Vermont law.

B. Declaratory Judgment A Threshold Matter As Of Right.

Petitioner plead the statute requires PIP on non-resident vehicles and Vermont policies of liability insurance provide Mass. PIP. Respondents denied. A declaration of law is the only way to “terminate” the “uncertainty” involved in both of these controversies. But a declaration was suppressed.

When the Court agreed (in Summ. Judg.s) that the statute requires and policies provide PIP which protects non-residents but *refused* to declare it law, Petitioner was deprived of his due process right under his Vermont contract to his claim that the insurers failed to investigate these claims. He was thereby deprived of nominal damages, compensatory damages, etc. for being required to file suit to force “GEICO”/USAA to investigate.

²³ That is, that it “would not terminate the uncertainty or controversy...”

²⁴ They have *refused* to address the *right to a declaration in the Sup. Ct., App.Ct., and SJC*. Their failure to provide “reasons” here will be proof their “refusal” to request declaration was intentional.

C. Obviation Of Summary Judgment.

Reading the Summ. Judg. rulings carefully, the Court clearly agrees with Petitioner's averred pleadings that the statute requires and non-resident policies of liability insurance provide PIP. If either were not the law as claimed by Respondents in their Answers and motions, the case is over by declaration leaving no need to go on to the next inquiries involving the meaning of "thirty days" as alleged by "GEICO" and "vehicle" as alleged by USAA. However, *Summ. Judg. was used to circumvent a declaration of law* with respect to any of these inquiries in order to dismiss "GEICO" and USAA *without declaring the law* on facts which were never investigated. There was never a need for Summ. Judg. if "GEICO" or USAA denied in good faith and were right. Yet, "thirty days" and "vehicle" are not declared the law.

D. Unflagging Obligation: Due Process And Equal Protection.

It is a judiciary's "virtually unflagging obligation" "to exercise the jurisdiction given them" (*Colorado River Water Conservation Dist.* at 817)²⁵ to declare law that is in dispute as fundamental property interests are involved and law disputed. And a person is "entitled to know and be granted their rights, whatever they might be" (*Cantell*) even if "not entitled to the relief sought" (*Somerset Importers, Ltd.*). Without a declaration of "*right(s), dut(ies), status and other legal relations,*" there is no due process. There are no rights. Petitioner's rights adjudicated under a

²⁵ This case (*Colorado River Water...*) was argued on appeal. It was ignored by the App.Ct. and Respondents. The SJC refused to address it on Application for FAR. Even the federal law established by the Supreme Court of the United States was ignored by the Mass. Judiciary.

statutory scheme that never existed robs him of his property interest without a compelling state interest by *refusing* to declare law. *Refusing* to declare the law so as to apply to *all persons similarly situated* with respect to “thirty days” and “vehicle” further deprives Petitioner of his rights of equal protection of the law under the 14th Amendment: Undeclared law, depriving Petitioner and no others.

Though Petitioner presented the correct statutory understanding of the “*right(s), dut(ies), status and other legal relations,*” pertaining to non-resident vehicle owners as written by the Legislature in 1971, the Judiciary, though agreeing, *refused* to enforce that law in Petitioner's case and *continues to enforce a statutory scheme that has never existed in law.*

Without a declaration of law, there can exist no rights.

E. Substantive Law And Due Process Violated. No Right To Be Heard.

The Court agrees with Petitioner that the statute (M.G.L. ch. 90, §§ 3 and 34A) requires PIP on non-resident motor vehicles. Respondents disagree. A declaration that this is, in fact, the law is obligatory for the following reasons:

1. The law is *disputed* by “GEICO” and USAA. “Controversy” and “uncertainty” exist as to whether the statute requires and policies provide PIP.
2. Courts have a virtually “unflagging obligation to exercise the jurisdiction given to them” (*Colorado River Water Conservation Dist.*) to declare law and a person is “entitled to know and be granted their rights, whatever they might be” (*Cantell*) even if “not entitled to the relief sought” (*Somerset Importers, Ltd.*),

3. A declaration “terminate(s) the uncertainty or controversy.”

4. And the Court would need inquire no further into the meaning of “thirty days” and “vehicle.” Judicial resources are conserved as estoppel prevents admission of “newly discovered” evidence. *Canavan v. Hanover Ins. Co.*, 356 Mass. 88, 248 N.E.2d 271 (1969). This is “compulsory insurance.”

5. If the law was declared to require PIP, Petitioner prevails on his contract claims because “GEICO” and USAA breached their contracts by failing to investigate facts and coverage in 2010. This is a question to be resolved under Vermont contract law. But there was no right to be heard.

F. Equal Protection Violated By “*Refusa*” Of Declaration.

The Court's “refusal” to commit to declaration of “thirty days” and “vehicle” in a declaration of law depriving Petitioner only but no others similarly situated represents disparate treatment where there exists no compelling state interest under the test of strict scrutiny violating his right of equal protection of the law.

A breach of contract damages claim (property right) was denied without adjudication.²⁶ In so doing, Mass. deprived this Vermont citizen of the fundamental right to a property interest by *refusing* to declare disputed Mass. statutory law and Vermont contract law where there exists no compelling state interest under the strict scrutiny test. There was no analysis of a state interest and no “reason” for “refusal” to declare law “stated in the record” as required by M.G.L. ch. 231A, § 3.

²⁶ No Rulings discuss the duties under the out-of-state coverage clause, implied or express promises, whether there was any investigation by “GEICO” or USAA, and whether there were breaches.

By *refusing* to declare that “the thirty days” and “vehicle” interpretations are the law dismissing his claims, Petitioner is denied equal protection of the law as these interpretations apply only to him and no others similarly situated. The App.Ct.'s ruling is non-precedential. It is not the law.

In addition, Petitioner is denied equal protection of Mass. law as a non-resident. The law obligates and protects everyone. Or no-one at all.

**G. There Was Never A Declaration Of Petitioner's Rights:
(Law Still In Dispute And Uncertainty Unterminated).**

But that he had such a right, there is no doubt. The App.Ct. concluded “...the judge *properly declared Leavitt's rights when granting summary judgment*”²⁷ PA 8. *Emphasis added.* Exactly where it did not say. What that declaration was, remains unsaid. And although “properly declared” blurs the line between the averred and what occurred,²⁸ it is proof that *Petitioner had a right to a declaration that the statute requires and policies provide PIP.* And that his claim Vermont contracts were breached was suppressed.

What occurred is this: nowhere in Summ. Judg.s does the Court use the word “declare” (or variant) with respect to Petitioner's “rights” (in 855 pages of transcripts and more than 6 years of litigation). The best evidence of what occurred is that his cross-motion for a declaration that the statute requires

²⁷ Petitioner's claim of error is not *where* his rights are declared. It is that they were *not* declared.

²⁸ The footnote above concerning the motion in limine to resolve the statutory scheme for all Parties remaining and going to trial was denied without comment. Petitioner's rights (against “GEICO” and USAA) were not “properly declared” (PA 8) in Summ. Judg.s (PA 13-30) nor properly adjudicated (against Phillips, Aebersold, etc) under the 1971 law as written. Rights cannot be “properly declared” under a statutory scheme that does not exist; nor ever has.

and policies provide PIP remained *undocketed for 134 days after filing* and then was “DENIED” (*refused*); no “reason” “stated in the record.” Petitioner's cross-motion for declaratory judgment²⁹ is never adjudicated. In any rulings.

1. Even In Deprivation No Declaration.

The line blurs further still. Not only did the Court “refuse” to declare the statute requires PIP and policies provide PIP (*entitling* Petitioner to breach of contract damages), it even *refused* to declare law its interpretation of the statute (“thirty-days” “GEICO”/“vehicle” USAA) by which it *deprived* Petitioner of his rights but no others similarly situated. The former was *refused* because Petitioner is entitled to protections and breach of contract. The latter because the Court knows the meanings ascribed to “thirty-days” and “vehicle” represent error to be applied to Petitioner only. The Court may change its position as those interpretations are not declared law.

Petitioner could not get his “*right(s), dut(ies), status and other legal relations*” declared regardless of whether the Court deemed his pleas correct or incorrect. Right or wrong. Applicable to everyone. Or only him.

H. USAA Summ. Judg. Was Clear Error - But Denied Review.

As an example of the Judiciary's intent to “refuse” to declare its law pertaining to non-residents, the USAA Summ. Judg. Decision (PA 13 – 19) relied upon approximately seven points of fact or law to dismiss Petitioner's claims against USAA for breach of contract. However, in the Motion for

²⁹ Along with many other legal arguments raised by Petitioner.

Reconsideration of its Decision, Petitioner pointed out each of these points of fact or law were clear errors. That motion was *never docketed*. It was *never decided* or considered by the Court. And though those clear errors were raised on appeal, they were *never addressed by the App.Ct.* (PA 4 – 12). Though raised in the Application for FAR, the *SJC refused to address those clear errors*. Claims against USAA for breach of contract were never adjudicated or reviewed on appeal though raised in detail. The statute requires “owners” to “maintain” liability coverages; not the “vehicle.” For “owner thereof” *see* PA 13 – 19 and PA 7, 23, and 31.³⁰

This Court should grant this Petition because Mass. deprives citizens of other states the fundamental right to property by *refusing* to declare disputed Mass. statutory law and other states' contract law where there exists no compelling state interest under the strict scrutiny test.

REASON 2: VIOLATION OF ARTICLE IV

Mass. violates Article IV when it *refuses* to “honor” contracts entered into in Vermont. Here Mass. *refuses* to declare, or review, under governing Vermont law, whether there were breaches of Vermont contracts depriving Petitioner.

Article IV requires states to respect public acts, etc. of every other state. Aebersold and Petitioner had a property interest in Vermont contracts. Nowhere does the Court address these rights under Vermont contract law and whether “GEICO” or USAA breached those contracts. PA 4 – 33. FAR was denied (PA 1).

³⁰ Required to “maintain” PIP, he was denied PIP. *See* PA 10, footnote 9.

Had the Court declared policies of liability insurance do not require PIP on non-resident vehicles, it “terminate(s) the uncertainty or controversy.” However, Petitioner is correct on his pleas, and the next question is whether “GEICO” and USAA breached their contracts under Vermont contract law. The Court made no inquiry or analysis as to whether there was a breach of contract under Vermont law.

The non-precedential interpretations of the statute used as authority to dismiss Petitioner's claims against “GEICO” and USAA while not declaring that to be the law applicable to all others similarly situated represents disparate treatment of Petitioner violating his rights of equal protection under the law. If the Judiciary cannot declare the law for all, it cannot deprive Petitioner alone. It cannot reserve the opportunity to change its position concerning those interpretations. The errors *refusing* to declare the Vermont law violate due process and equal protection.

This Court should grant this Petition because Mass. violates Article IV when it *refuses* to honor contracts entered into in Vermont.

REASON 3: UNCONSTITUTIONALITY OF STATUTE

M.G.L. ch. 231A is unconstitutional or unconstitutional as exercised.³¹ The Judiciary *refused* to exercise the jurisdiction conferred by the Legislature as it *refused* to declare the law. No “reasons” were “stated in the record.” No compelling interest exists for the state taking Petitioner's property interest under the insurance contracts with “GEICO” and USAA. The statute which states the Judiciary “may” is unconstitutional when the Court's “refusal” to declare rights

³¹ Depriving Petitioner of due process and equal protection of Mass. law under the 14th Amendment.

deprives a person of a property interest without a compelling state interest.

M.G.L. ch. 231A confers a limited power to “refuse” to declare disputed law, contracts, etc. where declaration would “not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons” but does not include the jurisdiction to “refuse” to declare the law which violates a fundamental right that does not withstand the test of strict scrutiny and, as here, no “reasons” for “refusal” to declare the law are “stated in the record” as required by statute. The jurisdiction conferred does not permit the Judiciary to interpret the word “may” without limitation. The circumstances under which a declaration can be *refused* are limited by statute. The Judiciary may not “refuse” a declaration without those circumstances present.

As a practical matter, unless a court declares law that is disputed and that affects everyone,³² none *know* of their rights. None are protected by statute or policy. A declaration is the way a person is “entitled to know and be granted [his] rights, whatever they might be” (*Cantell*). There are good reasons this Court has held Judiciaries have an “unflagging obligation to exercise the jurisdiction given to them” (*Colorado River Water Conservation Dist.*).

A citizen's right to a declaration should not be *refused* depriving him of a fundamental interest in property without a compelling state interest.

This Court should grant this Petition because M.G.L. ch. 231A is unconstitutional or unconstitutional as exercised.

³² The Rulings never discuss the impact on legal relations of the correct law on all Parties involved.

CONCLUSION

Without intervention by the Supreme Court of the United States, the Mass. Judiciary will continue to “refuse” to enforce its laws for citizens of other states by *refusing* to declare its law and contract law of other states.³³ They applied law to Petitioner that never existed.³⁴ And abandoned their “unflagging obligation.”

The Court should grant this petition because [1] Mass. deprives citizens of other states of the fundamental right to a property interest by *refusing* to declare disputed Mass. statutory law and other states' contract law where there exists no compelling state interest under the strict scrutiny test, [2] violates Article IV when it *refuses* to “honor” contracts entered into in Vermont, and [3] M.G.L. ch. 231A is unconstitutional or unconstitutional as exercised. The “refusal” to declare Mass. law and contracts of other states deprives over 20 people per day³⁵ of PIP. Victims include children.

The Solicitor General has been invited to participate in this Petition. It is requested the Solicitor General be invited by this Court to participate with Amicus Briefs. For if the Mass. Judiciary can deprive Petitioner of his property interest in out-of-state contracts and due process and equal protection of its laws, *it can deprive any person with no compelling interest.*

³³ In brief, the Legislature intended non-residents to be “protect[ed]” by Mass. PIP since 1971. *See* (M.G.L. ch. 90, §§ 3 and 34A). The Judiciary agrees. The Respondents disagree and requested the law not be declared (i.e. enforced). The Mass. Judiciary did just that.

³⁴ Why would a Judiciary *refuse* to declare the plain meaning of the law which provides notice to everyone of the law's “protection” while insurers (like “GEICO” and USAA) continue to dispute the statute requires and policies provide PIP? With full knowledge victims of such “refusal” include the most vulnerable amongst us. Our children.

³⁵ Average based on Mass. Department of Transportation statistics for years 2015 and 2016.

Presently, as to its law applicable to “owners” of “non-resident” “vehicles,” those traveling into Mass. are in total darkness where there should be light. There is no declaration of its law and Respondents still deny PIP is required on non-resident vehicles and that policies of insurance provide those coverages. Petitioner remains in a state of “uncertainty” each time he travels into Mass. This Court should grant this Petition and require Mass. to “terminate the uncertainty” as to its law.

This matter has significance to all people. In America and beyond.³⁶ The “justice” exercised here represents no justice at all without declaration.

Mass. statute has required *non-resident* motor vehicle owners to maintain PIP provisions as part of their policy of *liability* insurance. Since 1971. Its Judiciary *refuses* to enforce its law to protect *non-residents*.

Respectfully Submitted,

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³⁶ See PA 6, footnote 6. Mass. statute *obligates and protects* citizens of every “state or country.” But the Judiciary *refuses* to declare it the law at the request of the Respondents. The “uncertainty” of the disputed law remains un-“terminated.” Petitioner was deprived, and will continued to be deprived, of the protections of the statute and rights under his insurance contract every time he travels to Mass.