

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TITAN INSURANCE COMPANY,

Plaintiff-Appellee,

v

REPUBLIC WESTERN INSURANCE  
COMPANY,

Defendant-Appellee,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant,

and

PACIFIC EMPLOYERS INSURANCE  
COMPANY,

Defendant.

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Before: Fitzgerald, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Defendant Auto Club Insurance Association (ACIA) appeals as of right that part of an order granting summary disposition under MCR 2.116(C)(10) in favor of plaintiff, Titan Insurance Company, in this action brought pursuant to MCL 500.3172(3) for reimbursement of no-fault automobile benefits paid out on behalf of Jamal Al-Shimmary.<sup>1</sup> We reverse.

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<sup>1</sup> The trial court also granted summary disposition in favor of defendants Republic Western Insurance Company and Pacific Employers Insurance Company.

On February 1, 2002, Jamal Al-Shimmary was injured in a motor vehicle accident in Dearborn while he was hauling automobile parts as an independent contractor for Horizon Freight System (Horizon). Though plaintiff was a Michigan resident, had a Michigan driver's license, and was driving a semi-truck that he purchased in Michigan, he registered the semi-truck in Oklahoma. Republic Western Insurance Company (Republic) insured the truck under a policy that provided only for non-trucking liability (for the truck when it was not hauling a trailer, known as "bobtail" coverage) and Michigan no-fault coverage, but excluded liability<sup>2</sup> coverage if the vehicle was "under carrier direction, control or dispatch," or "used to carry property in any business or in route for such purposes." There is no dispute that Al-Shimmary was operating the truck under dispatch at the time of the accident. Pacific Employers Insurance Company (Pacific) insured the trailer that Al-Shimmary was carrying at the time of the accident under a corporate policy issued to Horizon that included an endorsement for Michigan no-fault coverage. In addition, Al-Shimmary's estranged wife, Etah El-Selman, owned a personal vehicle that was insured by Auto Club Insurance Association (ACIA) under a Michigan no-fault policy.

In an underlying suit, Al-Shimmary filed suit on September 18, 2002, against Republic and Pacific seeking personal protection benefits. Because of a dispute between the two insurers concerning their obligation to provide coverage, the Michigan Assigned Claims Facility assigned the claim to Titan Insurance Company. See MCL 500.3172(1).<sup>3</sup> The trial court thereafter entered an order adding ACIA and Titan as defendants. On November 21, 2003, Al-Shimmary agreed to the dismissal of Republic, Pacific and ACIA, leaving Titan as the sole defendant. Titan arbitrated Al-Shimmary's claim for no-fault benefits and filed the present action seeking reimbursement of its no-fault payments pursuant to MCL 500.3172(3)(c).

Titan filed a motion for summary disposition seeking a ruling that ACIA was the insurer responsible for the payment of no-fault benefits under MCL 500.3114. Titan acknowledged that ACIA had taken the position that Al-Shimmary's vehicle was uninsured at the time of the accident. Titan maintained that both the Pacific policy and the Republic policy provided no-fault coverage that was in effect at the time of the accident. Republic filed a motion for summary disposition on the ground that coverage under its non-trucking policy was excluded because at the time of the accident that truck was "under carrier direction, control or dispatch" and was "used to carry property in any business." Pacific filed a motion for summary disposition on the ground that Al-Shimmary was an independent contractor operating his own semi-truck at the time of the accident and was not operating a motor vehicle owned or registered by Pacific's insured, Horizon. ACIA filed a response to Titan's motion for summary disposition asserting that under MCL 500.3101(1), Al-Shimmary, as the owner and operator of the truck, was required to "maintain security for payment of benefits under personal protection insurance." ACIA asserted that neither the Republic policy nor the Pacific policy provided such security. ACIA maintained that under MCL 500.3113(b), Al-Shimmary was not entitled to be paid personal protection insurance benefits and, therefore, under MCL 500.3172 Al-Shimmary was not a

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<sup>2</sup> The certificate of insurance included personal injury protection coverage under the category "Liability."

<sup>3</sup> ACIA was not involved in the case at that time.

“person entitled to claim” personal protection insurance benefits. ACIA requested summary disposition in its favor.

A hearing was held on the motions on December 13, 2006. Titan conceded that Republic’s policy excluded no-fault coverage in this case,<sup>4</sup> but argued that no-fault coverage was provided under both Pacific’s and ACIA’s policies. Pacific argued that coverage was not afforded under its policy for a number of reasons, including that Al-Shimmery, as the owner and registrant of the truck, was required, but failed, to maintain no-fault insurance coverage on the truck. ACIA argued that, pursuant to MCL 500.3113(b), Al-Shimmery was not entitled to personal protection benefits because he was the owner of the motor vehicle involved in the accident with respect to which the security required by MCL 500.3101 was not in effect. The trial court granted summary disposition in favor of plaintiff against ACIA on the ground that Al-Shimmery was an insured under his estranged wife’s policy and, therefore, ACIA had responsibility for the payment of no-fault benefits under MCL 500.3114(1). The trial court also granted summary disposition in favor of Republic and Pacific, finding that personal protection insurance coverage was precluded by exclusions in each insurance policy.

Whether plaintiff’s semi-truck was insured within the meaning of MCL 500.3113 is a question of law. Issues of law are reviewed de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Questions of statutory construction are also reviewed de novo. *People v Stone Transport, Inc*, 241 Mich App 49, 50; 613 NW2d 737 (2000).

MCL 500.3172(1) provides for payment of personal protection insurance benefits through an assigned claims plan to a person entitled to claim such benefits if the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage. Under MCL 500.3173 a person who, pursuant to any limitation or exclusion set forth in the no-fault act, would be disqualified from receiving personal protection benefits under an applicable insurance policy is also disqualified under the assigned claims plan.

Subject to certain exceptions not applicable here, every motor vehicle driven on Michigan roadways must be registered with the state. MCL 257.216; *Parks v DAIIE*, 426 Mich 191, 200 n 2; 393 NW2d 833 (1986). Under the no-fault act, MCL 500.3101 *et seq.*, the owner of a motor vehicle that is required to be registered in Michigan must carry personal protection insurance, property protection insurance, and residual liability insurance. MCL 500.3101(1); *Ardt v Titan Ins Co*, 233 Mich App 685, 689; 593 NW2d 215 (1999). If the vehicle is not insured as provided in MCL 500.3101, the owner is not entitled to personal protection insurance benefits for an accident involving that vehicle. MCL 500.3113(b); *Ardt, supra* at 689; *Wilson v League Gen Ins Co*, 195 Mich App 705, 707-708; 491 NW2d 642 (1992).

MCL 500.3113(b) provides in pertinent part:

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<sup>4</sup> Republic relied on its non-trucking exclusion.

A person is not entitled to be paid personal injury protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

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

ACIA maintains that the security required by section 3101<sup>5</sup> was not in effect at the time of the accident and therefore Al-Shimmary is not entitled to personal protection benefits at all.

Titan conceded at the hearing on the motion for summary disposition that Republic's policy did not provide no-fault coverage to Al-Shimmary because Al-Shimmary was engaged in trucking at the time of the accident. Further, Pacific's policy was issued to Horizon, which had no interest in Al-Shimmary's semi-truck. Horizon apparently owned the trailer that plaintiff was hauling, but it is the insurance coverage of Al-Shimmary's truck that is at issue here. And MCL 500.3101(1), when read in conjunction with MCL 500.3113(b), does not exclude the owner of a vehicle from maintaining insurance on an otherwise uninsured vehicle.

There is no evidence that Al-Shimmary had no-fault coverage on the semi-truck that was in effect at the time of the trucking accident. As stated above, MCL 500.3113(b) expressly precludes an uninsured owner from obtaining personal protection benefits under the facts of this case. Thus, Al-Shimmary was disqualified from receiving personal protection benefits. MCL 500.3113(b); MCL 500.3173. Therefore, the trial court erred in concluding that ACIA was required to reimburse Titan for the personal protection benefits paid to Al-Shimmary.

Reversed.

/s/ E. Thomas Fitzgerald  
/s/ William B. Murphy  
/s/ Stephen L. Borrello

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<sup>5</sup> Section 3103 pertains to motorcycles and is not relevant to this case.