STATE OF MICHIGAN

COURT OF APPEALS

TITAN INSURANCE COMPANY,

Plaintiff-Appellant,

v

NORTHLAND INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 11, 2008

No. 275866
Genesee Circuit Court
LC No. 06-084135-CK

Before: Gleicher, P.J., and O'Connell and Kelly, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. Because I conclude that plaintiff is not a "named insured," I would affirm the trial court's grant of summary disposition in favor of defendant.[1]

The issue in this case is whether plaintiff may recoup from defendant half the expenses paid for serious injuries that a truck driver sustained after a forklift pushed a load of pipes onto him. At the time of the accident, the pipes were being unloaded from a trailer that the driver had leased from defendant's named insured, Steel Transportation Services. Plaintiff's insurance policy was the only one presented in the trial court that specifically denominated the truck driver as a "named insured." Plaintiff's policy covered the driver's personal pickup truck.

Plaintiff argued below that defendant's policy also named the driver as an insured, so according to MCL 500.3114(1) and MCL 500.3115(2), the insurance companies shared priority over the driver's injuries, and plaintiff should recover half its expenses from defendant. The trial court reiterated an earlier ruling that "named" is a term of art in insurance policies and statutes, so plaintiff alone had priority over the driver's personal injury claim. On appeal, plaintiff again argues that the plain language of MCL 500.3114(1), together with the fact that defendant's

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[1] This priority case is not before us on the issue of whether Eschenweck is entitled to no-fault benefits, but relates solely to a question of reimbursement from one insurance company for benefits paid out by another insurance company. All panel members agree that Eschenweck is entitled to no-fault benefits. In my opinion, Titan should be congratulated for undertaking the proper course of action and paying the benefits and then suing defendant for reimbursement. This is precisely what should occur in these types of priority cases.

policy specifically denominates the driver as an insured individual, means that defendant should share the liability for paying the driver's personal injury claims. This Court reviews de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCL 500.3114(1) states that "a personal protection insurance policy . . . applies to accidental bodily injury to the person named in the policy . . . if the injury arises from a motor vehicle accident." Plaintiff argues that defendant's policy specifically addresses the driver by name, so by the express terms of MCL 500.3114(1), defendant's policy also applies to the driver's injuries. The problem with plaintiff's argument, and the majority's position, is that this Court has repeatedly held that the word "named" in the statute's phrase "named in the policy" is a legal term of art that specifically refers to a policy's "named insured." See *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264; 548 NW2d 698 (1996), and cases cited therein. The "named insured" in defendant's policy is Steel Transportation Services, and the driver was only designated as an "Additional Insured" on that policy. A policy that lists an injured party by name as anything other than a "named insured" does not take equal priority with a policy that lists the injured person under the technical designation "named insured." See *id*. at 264-265; see also *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 253; 535 NW2d 207 (1995). This Court is bound by these earlier interpretations of the statute. MCR 7.215(J)(1). The majority's contention that being listed as the "lessor named in the schedule" makes the driver an insured "named in the policy" is contrary to this case law, as the driver is still not the "named insured." Therefore, I respectfully dissent.[2]

/s/ Peter D. O'Connell

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[2] But for the current state of the law, I might agree with Judges Kelly and Gleicher's interpretation of the statute. Unfortunately, this panel is bound by MCR 7.215(J)(1) to follow the prior published cases of this Court. In my opinion, the case law is clear and we cannot ignore it, but are bound to follow it. If both Judges Kelly and Gleicher want to overrule prior case law, there exists a process to accomplish this goal. See MCR 7.215(J)(2) and (3). By failing to use the correct process, the law loses some of its clarity, and litigants are left in a state of flux as to which case to follow. Such a result only increases litigation and wastes valuable court resources.