SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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No-Fault Priority: Sometimes, it really is just that simple.

By Drew Broaddus

Michigan's No-Fault Act, at MCL 500.3114(1), creates what are seemingly simple rules for determining the priority of insurers. When a person is injured while driving or riding in a motor vehicle, first in priority is that person's own insurance policy. If there is none, next in line is the insurance policy issued to the insured person's resident relative (such as a spouse, parent, or sibling). If there is no such policy, third in priority is the insurer of the *owner* of the vehicle that the person was occupying when she was hurt. If there is no such policy, fourth in priority is to the insurer of the *driver* of the vehicle occupied. If no policy meets any of these four descriptions, the injured person looks to the Assigned Claims Facility.

These rules became complicated when Wyvonne Spencer was injured in an accident while driving her husband's Ford Ranger. Hartford insured the Ranger through a no-fault policy that included only plaintiff's husband as a "named insured." Mrs. Spencer also held a no-fault insurance policy issued by Geico, which listed both she and her husband as the "named insured," but the Geico policy did not cover the Ranger.

Under a straightforward application of § 3114(1), Geico would have been first priority because it was Mrs. Spencer's insurer; she was named on the Geico policy and not Hartford's. However, Geico argued that Hartford – as insurer of the owner of the vehicle occupied – was first priority, due to particular policy language in Geico's policy. Specifically, Geico pointed to an exclusionary clause in its policy which stated: "[t]here is no coverage for bodily injury to you while occupying or while as a pedestrian through being struck by any motor vehicle owned by or registered to you which is not an insured auto." The Circuit Court disagreed, finding that even if Geico's interpretation of the clause was accurate, it would conflict with the No-Fault Act. *Spencer v Geico & Hartford*, unpublished opinion per curiam of the Court of Appeals, rel'd 12/19/13 (Docket No. 312044). Geico appealed, and the Court of Appeals affirmed, although not exactly for the reasons stated by the trial court. *Id.*

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"[I]t is the policy of the no-fault act that persons, not motor vehicles, are insured against loss." *Lee v DAIIE*, 412 Mich 505, 509 (1982); *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 255 (2012). This simple maxim proved to be dispositive here; Ms. Spencer was a named insured under Geico's policy but not Hartford's.

Although no-fault carriers are free to include various kinds of exclusions in their policies, this does not mean that courts will enforce them. "Insurance policy provisions that conflict with statutes are invalid," *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 434 (2009), and "a motor-vehicle insurer cannot avoid or shift its statutory primary responsibility for PIP benefits." *Corwin, supra* at 247.

Geico's argument under the Financial Responsibility Act *might* have worked in the *commercial* context, see *Integral Ins Co v Maersk Container Service Co, Inc,* 206 Mich App 325, 330-331 (1994), but a commercial policy insures "motor vehicles," rather than the "injured individual." See *Besic v Citizens Ins Co,* 290 Mich App 19, 31-32 (2010).

The appellate panel first turned its attention to Geico's exclusionary clause. "The use of the word 'while' twice in the provision acts as a signal, starting two separate clauses, separated by the word 'or.'" *Spencer, supra* at *2. The panel found that "[a] plain reading of the provision reveals two situations in which coverage is excluded: (1) '[t]here is no coverage for bodily injury to you while occupying ... any motor vehicle owned by or registered to you which is not an insured auto'; and (2) '[t]here is no coverage for bodily injury to you ... while as a pedestrian through being struck by any motor vehicle owned by or registered to you which is not an insured auto.'" *Id.* Although the court found that this clause is "not a model of clarity," the panel agreed with Geico that the exclusionary clause does inform Geico customers that if Geico does not insure the vehicle involved in an accident, than there is no coverage under the policy.

However, the panel went on to explain that "though the exclusionary clause appears to negate coverage, it is nonetheless invalid because the clause violates the no-fault act and cannot be enforced." *Spencer, supra* at *3. This is because, as explained at *Spencer, supra* at *4:

> The exclusionary clause in Geico's insurance policy denies PIP coverage to the named insured if the named insured occupies a vehicle that is not insured by Geico. By its terms, Geico's policy covers and follows the vehicle – not the policy holder. This framework violates the no-fault act, which intends that "an injured person's personal insurer stand primarily liable for [PIP] benefits whether or not its policy covers the motor vehicle involved and even if the involved vehicle is covered by a policy issued by another no-fault insurer." … Viewed from the policy holder's perspective, MCL 500.3114(1) requires the policy holder to seek compensation from his personal policy, regardless of whether that policy insures the vehicle involved in the accident. … Stated simply, "a motor-vehicle insurer cannot avoid or shift its statutory primary responsibility for PIP benefits." … If enforced, Geico's exclusionary language would do exactly that.

Although Geico argued that the exclusionary clause was permissible under the Financial Responsibility Act, MCL 257.520(j), the panel was unimpressed by this argument, noting that even if the "insurance policy might well be reconciled with the financial responsibility act, its failure to comply with the no-fault act nevertheless renders it violative of public policy."

CONTACT US

Troy
2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-538-1223

Lansing
6639 Centurion Drive, Ste. 100, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
2025 East Beltline SE, Ste. 600, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs
Thomas N. Economy
Jane Kent Mills
Michael W. Slater

Editor
Linda Willemsen

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