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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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"The insurer … of the motor vehicle" within the meaning of MCL 500.3114(5) is not necessarily the same insurer that would cover the motor vehicle's driver under MCL 500.3114(1)

By Drew W. Broaddus

While the proposition stated in the title may seem counter-intuitive, it more or less sums up the Court of Appeals' eight-year old published opinion in *Dobbelaere v Auto Owners,* 275 Mich App 527 (2007). Recently, the Court of Appeals was called upon to revisit *Dobbelaere* in *Prishtina v Auto-Owners,* unpublished opinion per curiam of the Court of Appeals, issued March 10, 2015 (Docket No. 318912).

In *Prishtina,* the claimant was injured while operating a motorcycle. On June 18, 2011, Mr. Prishtina was driving a motorcycle owned by a friend on I-96 in Detroit, when a Crown Victoria operated by Bryant Lee moved into plaintiff's lane and collided with the motorcycle. At the time of the accident, Mr. Prishtina resided at his parents' residence, and his father was insured through Auto Club. Bryant, the owner and registrant of the Crown Victoria, did not maintain an insurance policy on the vehicle. However, Odell Lee – Bryant's father, with whom Bryant resided – maintained his own Auto-Owners insurance policy on the vehicles that he owned. This policy did not mention Bryant or the Crown Victoria. Both Auto Club and Auto-Owners (represented by Secrest Wardle) moved for summary disposition, arguing that the other was responsible for Mr. Prishtina's first-party claim. Auto-Owners argued that this case was indistinguishable from *Dobbelaere;* that nothing in the Auto-Owners policy made it "the insurer" of Bryant within the meaning of MCL 500.3114(5). The trial court denied Auto-Owners' motion for summary disposition and granted summary disposition in favor of Auto Club. In finding that Auto-Owners was "the insurer" of Bryant under § 3114(5), the trial court relied upon language in the Auto-Owners policy that would have potentially entitled Bryant to personal injury protection (PIP) benefits, had he been making such a claim.

SECREST WARDLE NOTES:

Motorcyclists' PIP claims can be a source of confusion because they deviate from the general rule that persons injured in a motor vehicle accident look to their own insurance first. See *Prishtina,* unpub op at 2.

Motorcyclists' PIP claims also differ from other PIP claims because, although the No-Fault Act is generally the "rule book" for first-party litigation, *Rohlman v Hawkeye-Security Ins Co,* 442 Mich 520, 524 (1993), the narrow question of who is "the insurer" under § 3114(5) is determined by reference to the policy language. *Dobbelaere,* 275 Mich App at 532-533.

"Whether the insurer of a no-fault insurance policy constitutes the 'insurer' of a relative for purposes of MCL 500.3114 depends on the specific language of the insurance policy at issue in the case, not on the fact that the relative may be entitled to PIP benefits himself by operation of law under MCL 500.3114(1)." *Prishtina,* unpub op at 3.

The Court of Appeals reversed, finding that Auto Club – *and not* Auto-Owners – was responsible for Mr. Prishtina's PIP benefits. The panel began its analysis with the language of MCL 500.3114(l), which states: "*Except as provided in subsections (2), (3), and (5),* a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." (Emphasis added.) Because this claim was brought by a motorcyclist, and the accident involved a motor vehicle, § 3114(5) controlled. *Prishtina,* unpub op at 3. This subpart establishes the following order of priority for the motorcyclist's PIP claim:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident….

Auto Club acknowledged that its policy met the description in § 3114(5)(c). Therefore, Auto-Owners could only be "first in priority" if it was "the insurer" of Bryant Lee (who was both the "owner or registrant" and the "operator" of the motor vehicle involved in the accident). *Prishtina,* unpub op at 3. Because the No-Fault Act does not define the word "insurer," the panel looked to dictionary definitions and the Auto-Owners policy. *Id.* Based on the policy language and dictionary definitions, the panel accepted Auto-Owners' position that – although Bryant may have been entitled to PIP benefits from Auto-Owners – Auto-Owners was not "his insurer." Neither Bryant nor his vehicle were named in the policy; the only named insured was Odell.

The panel then addressed Auto Club's argument that *Dobbelaere* was wrongly decided, and that the "insurer" as delineated in § 3114(1) (i.e., on a "household basis") should be the same as the "insurer" and § 3114(5). The panel rejected this argument as follows:

> …[I]t appears that [Auto Club] overlooked the plain language of the statute, which limits these derivative "household" benefits to "accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household." MCL 500.3114(l). Thus, while a resident relative may be eligible for PIP coverage under his family member's insurance, this coverage only applies to accidental bodily injury that occurs to the resident relative himself, not accidental bodily injury that occurs to a third party. MCL 500.3114(1). Likewise, the cases cited by [Auto Club] in its brief fail to establish the broad principle articulated by ACIA, i.e., that … a no-fault insurer of the three types or classes of § 3114(l) household insureds … is their "own insurer" ... or "household insurer," and that any one of those § 3114(1) three classes of household PIP-insureds would therefore call the insurer his/her "insurer." Instead, the cases cited by ACIA reiterate that a relative domiciled in the same household of a named insured is entitled to PIP benefits *when the relative himself is injured,* meaning that the insurance company providing no-fault insurance in his household is "his insurer" [only] with regard to *his own injuries….* *Prishtina,* unpub op at 7 (emphasis in original).

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We welcome your questions and comments.

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