

STATE OF MICHIGAN  
IN THE SUPREME COURT

FARMERS INSURANCE EXCHANGE

Plaintiff/Appellee,

Supreme Court File No: 132179

Court of Appeals No.: 259763

vs.

Lower Court No. 03-21922-CK

FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN

Defendant/Appellant.

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**PLAINTIFF/APPELLEE'S RESPONSE TO  
DEFENDANT/APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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**STATEMENT OF ORDERS APPEALED**

Defendant/Appellant Farm Bureau seeks leave to appeal the Court of Appeals' August 17, 2006 published opinion affirming the trial court's declaratory judgment entered on December 2, 2004. This Court's jurisdiction is based on MCR 7.301(2)

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**COUNTER STATEMENT OF QUESTIONS PRESENTED**

I. DID THE LOWER COURTS ERR IN INTERPRETING MCL 500.3114(5)(A), THAT AN INJURED MOTORCYCLIST MAY SEEK NO-FAULT BENEFITS FROM ANY INSURER OF ANY OWNER OF AN UNINSURED MOTOR VEHICLE INVOLVED IN AN ACCIDENT, EVEN IF THE POLICY OF INSURANCE PROVIDERS NO COVERAGE FOR THE MOTOR VEHICLE INVOLVED IN THE ACCIDENT, THE OWNER OF THE MOTOR VEHICLE, OR THE MOTORCYCLIST?

The trial court answered: No

The Court of Appeals answered: No

Plaintiff/Appellee answers: No

Defendant/Appellant answers: Yes

II. DID THE LOWER COURTS REVERSIBLY ERR BY CONSTRUING DEFENDANT/APPELLANT'S POLICY IN MANNER CONTRARY TO ITS UNAMBIGUOUS TERMS, WHERE THE POLICY ISSUED TO JOHN PETIPRIN DOES NOT PROVIDE COVERAGE FOR EITHER THIRD-PARTY CLAIMANT RORY OSENTOSKI AS A "NAMED INSURED" OR THE VAN INVOLVED IN THE ACCIDENT AS AN INSURED MOTOR VEHICLE," AND WHERE NEITHER THE THIRD-PARTY CLAIMANT NOR THE VAN QUALIFY FOR COVERAGE UNDER THE TERMS OF THE POLICY ISSUED BY DEFENDANT/APPELLANT?

The trial court answered: No

The Court of Appeals answered: No

Plaintiff/Appellee answers: No

Defendant/Appellant answers: Yes

**RESPONSE TO STATEMENT OF GROUNDS FOR  
GRANTING LEAVE TO APPEAL**

Plaintiff/Appellee, Farmers Insurance Exchange (hereinafter referred to as “Farmers”) agrees that this case “presents an opportunity to exam questions of first impression and of major significance to jurisprudence under the No-Fault Act” as stated in Defendant/Appellant Farm Bureau Mutual Insurance Company’s (hereinafter referred to as “Farm Bureau”) Application. Farmers believes it would be beneficial for the Supreme Court to examine the language of MCL 500.3114(5), as well as MCL 500.3114(4) and MCL 500.3115(1), which govern the priorities of insurance carriers in providing no-fault benefits when a motor vehicle accident occurs. The interpretation of these Statutes is critical in insuring the no-fault system operates efficiently and uniformly. The construction of the Statutes is commonly disputed in cases both in which an injured party is seeking first party benefits from an insurer, or when there is a dispute between two insurers regarding which is the proper insurer to pay benefits to an injured party. If this Court were to definitively interpret these Statutes, the entire no-fault system could work more efficiently.

That being said, however, as a substantive matter, Farm Bureau’s arguments fail given the current status of the law. The substantive issues shall be addressed below.

## STATEMENT OF FACTS

On July 17, 2002, the claimant, Rory Osentoski, was riding his motorcycle when he was struck by a 2000 Chevy van that was being driven by Lynn Smith. The 2000 Chevy van was co-owned by Lynn Smith and John Petiprin. Although the 2000 Chevy van was uninsured on the day of the accident, John Petiprin also owned a 1986 Ford F250 that was insured by Defendant-Appellant, Farm Bureau, on the day of the accident. Since Rory Osentoski did not own an insured vehicle and did not live with a relative who owned an insured vehicle, he applied to the Michigan Assigned Claims Facility on November 26, 2002 for first-party no-fault benefits. Subsequently, Mr. Osentoski's claim was assigned to Farmers to act as the Assigned Claims Servicing Insurer. Thereafter, Farmers began paying Mr. Osentoski no-fault benefits and filed a declaratory complaint requesting the Trial Court to determine that Farm Bureau is the appropriate insurer to cover Mr. Osentoski's claim, pursuant to MCL 500.3114(5). On March 24, 2004, the Trial Court issued an Opinion granting Farmer's Motion for Summary Disposition and stated that Farm Bureau is the appropriate insurer to cover Mr. Osentoski's claim (See attached Exhibit "A").

ARGUMENT

**I. THE LOWER COURT DID NOT ERR IN INTERPRETING MCL 500.3114(5)(a) THAT AN INJURED MOTORCYCLIST MAY SEEK BENEFITS FROM ANY AUTOMOBILE INSURER OF ANY OWNER OF THE MOTOR VEHICLE INVOLVED IN THE ACCIDENT EVEN IF THAT OWNER’S INSURER DID NOT ISSUE A POLICY OF INSURANCE COVERING THE PARTICULAR MOTOR VEHICLE INVOLVED IN THE ACCIDENT.**

**A. Standard of Review**

This Court's review of a Motion for Summary Disposition is de novo. *Singerman v Municipal Service Bureau, 455 Mich 135, 565 NW2d 383 (1997)*. When reviewing a Motion for Summary Disposition based upon MCR 2.116(C)(10), this Court must review all substantively admissible evidence (documentary or testimony) submitted by the parties in a light most favorable to the party opposing the Motion. *Maiden v Rozwood, 461 Mich 109, 597 NW2d 817 (1999)*. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Maiden, supra*.

**B. The lower courts did not err when they declined to apply the dictionary definition of “insurer” or considering the implications of the Financial Responsibility Act.**

The trial court and the Court of Appeals both realized that the Statute as written in the No-Fault Act is unambiguous and can be interpreted by the plain language of the Statute.

MCL 500.3114 and 500.3115 govern the order of priorities regarding payment of first-party no-fault benefits. In this case, §3114(5) governs the priority issue since the

claimant was riding a motorcycle at the time of the accident. It provides the following:

"A person suffering accidental bodily injury arising from a motor vehicle which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

- 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."

The language in §3114(5) is almost identical to the language contained in MCL 500.3115, which governs priority with regard to non-occupants involved in a motor vehicle accident. MCL 500.3115(1)(a) provides the following:

"Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

- a. insurers of owners or registrants of motor vehicles involved in the accident."

The Court of Appeals interpreted this language just as it is written. Mr. Petiprin was the record owner of the motor vehicle involved in the accident. Farm Bureau was Mr. Petiprin's insurer. The statute does not, as it is written, require analysis into what specific vehicles were insured. As the Court of Appeals pointed out, the statute does not say "the insurer of the motor vehicle involved," it states "the insurer of the *owner or registrant* of the motor vehicle involved in the accident." (**Exhibit B - page 5**). As the Court of Appeals

pointed out, if the legislature had intended to limit recovery to those vehicles that were specifically listed on the policy of insurance, it could have written the statute to have that effect.

This holding is consistent with the current state of the case law. In *Pioneer State Mutual Insurance Company v. Titan, et al*, 252 Mich App 330, 652 NW2d 469 (2002), a pedestrian who was struck by a van sued the Assigned Claims Servicing Insurer and the insurer of other vehicles owned by the van's owner but not involved in the accident. The Court of Appeals held that Titan, the Assigned Claims Servicing Insurer, was lower in order of priority than Pioneer State Mutual, the insurer of the non-involved vehicles owned by the owner of the involved vehicle which was uninsured. The Court of Appeals stated that the "statutory language clearly states that **the insurer of the owner or registrant of the motor vehicle involved in the accident is liable for payment of personal protection insurance benefits.**" In interpreting MCL 500.3115(1), the Court uses the exact words contained in MCL 500.3114(5)(a). The Court further stated, "the statute does not mandate that the vehicle involved in the accident must have been insured by the insurer of the owner before an injured person can seek benefits." The Court also indicated that holding Pioneer State Mutual liable for no-fault benefits "is consistent with the legislative intent that persons rather than vehicles be insured against loss."

The only difference between the statute interpreted in the *Pioneer* case and the statute at issue in this case is the difference in articles used. First of all, to differentiate these two statutes in the manner urged by Farm Bureau would be to ignore the clause "of

the owner or registrant.” Second, the change in language is easily explained by the different type of injured to which that each statute applies. MCL 500.3114(5) applies to a party that is injured while an operator or passenger of a motorcycle. Presumably, most motorcycle accidents involving a motor vehicle will involve one motorcycle and one motor vehicle. Thus, the singular article “the” is appropriate. MCL 500.3115 deals with pedestrians suffering accidental bodily injury as the result of a motor vehicle accident. Presumably, pedestrians can be injured because of an accident involving just one motor vehicle, or from accidents involving more than one motor vehicle. The strong possibility of being injured as a result of an accident involving multiple motor vehicles is the reason the legislature used plurals in that statute. Since there is no material difference in the language of these two statutes, the Court of Appeals was correct in applying *Pioneer*.

The primary rule with regard to statutory interpretation is to ascertain and give effect to the intention of the legislature. Effect must be given to every word, sentence and section of an act. *Dussia v Merman*, 386 Mich 244, 191 NW2d 307 (1971). Statutes in *Pari Materia* are those which relate to the same subject matter or share a common purposes. Such statutes must be read together as constituting one law, even if they contain no reference to one another and were enacted on different dates. When interpreting two statutes which arguably cover the same subject matter, they must be construed to preserve the intent of each and, if possible, interpreted in such a way that neither denies the effectiveness of the other. *Crawford County v Secretary of State*, 160 Mich App 88, 480 NW2d 112 (1987).

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Additionally, the Court *in re Rhein 73 BR 285 (1987)*, stated "**there is no reason why the words in one section in a code should have any different meaning ascribed to them than nearly identical words appearing in other sections of the same code. Indeed, they are to be interpreted consistently.**"

Although the language in MCL 500.3115(1)(a) was interpreted by the Court in *Pioneer*, the language in MCL 500.3114(5) was not. Given that the statutes contain nearly identical language, the two sections should be read consistently to avoid inconsistent results given similar factual scenarios. There is no material difference between "the insurer" as contained in MCL 500.3114(5)(a) as compared to "insurers" as contained in MCL 500.3115(1)(a). To read the sections differently would lead to inconsistent results.

Although the Defendant-Appellant claims that the legislature expressly provided that the insurer of the motor vehicle that was involved in the motor vehicle accident is responsible to provide coverage for motor vehicle accidents involving motorcyclists, the Defendant-Appellant has not properly read MCL 500.3114(5). Again, subsection (5)(a) states: "The insurer of **the owner or registrant** of the motor vehicle involved in the accident." The Defendant-Appellant interprets the statute as if it reads "The insurer of the motor vehicle involved in the accident" and leaves out "the owner or registrant." Clearly, pursuant to the plain language of the statute as well as case law, the insurer of **the owner or registrant** of the motor vehicle involved in the accident is liable for the motorcyclist's injuries regardless of whether it insured the vehicle involved in the accident.

Additionally, Defendant-Appellant's assertion that a health insurer or a

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homeowners insurer would be liable is not true. The homeowners insurer and the health insurer are not subject to the provisions of the No Fault Act and, therefore, they would not be liable for No Fault benefits.

The case of *Grand Valley v Amerisure*, 262 Mich App 10, 684 NW2d 391 (2004) also supports Farmers' position in this case. In the *Grand Valley* case, the Court of Appeals held that Amerisure, an Assigned Claims Servicing Insurer, was liable for first-party no-fault benefits for injuries sustained by Michael Anthony who was injured after jumping from a Ford Explorer while Jeremy Whitworth drove the vehicle. At the time Michael Anthony was injured, neither he nor any member of his household had no-fault insurance. Further, the Ford Explorer was owned by Whitworth and registered in his name, but had been insured by Auto-Owners under a policy issued to Whitworth-Borta, Inc. Whitworth was not a named insured in the Auto-Owners' policy. The Court of Appeals upheld the Trial Court's decision that granted Auto-Owners' Cross-Motion for Summary Disposition, finding that the named insured, Whitworth-Borta, Inc., did not have an insurable interest in the 1991 Ford Explorer. Therefore, there was no valid policy of insurance that covered the driver of the vehicle or its occupants at the time of the accident. As such, the Assigned Claims Servicing Insurer, Amerisure, had to pay Mr. Anthony's no-fault benefits.

Although the *Grand Valley* case involved an occupant and MCL 500.3114(4), the court stated that the language in MCL 500.3115(1), which involves non-occupants is "materially identical, for our purposes, to the language at issue in MCL 500.3114(4)." MCL 500.3114(4)(a) states: "The insurer of the owner or registrant of the vehicle

occupied” and MCL 500.3114(5)(a) states: “The insurer of **the owner or registrant of the motor vehicle** involved in the accident.” As such, courts have determined that the language contained in MCL 500.3114(4) and (5), and MCL 500.3115(1) is materially identical. The Court found that the owner, registrant and operator of the Ford Explorer was Whitworth who had no policy of insurance with Auto-Owners and, therefore, Mr. Anthony could not claim no-fault benefits from Auto-Owners.

The *Grand Valley* court also relied on *Madar v League Gen. Ins. Co.*, 152 Mich App 734, 394 NW2d 90 (1986) and *Univ. Underwriters Grp. v Allstate, Ins. Co.*, 246 Mich App 713, 635 NW2d 52 (2001). In *Madar, supra*, Albert Madar was killed by an automobile insured by League General. Before his death, Mr. Madar sold an automobile insured by ACIA, however, Mr. Madar was still a named insured on the policy since he had not cancelled it at the time of his death. The court found that ACIA was responsible for paying no-fault benefits because the ACIA policy insured Mr. Madar’s health and not his specific automobile. The *Madar* court stated that PIP coverage “protects the person, not the motor vehicle.” The *Grand Valley* court also indicated that *Universal Underwriters* reaffirmed that PIP benefits applied to the person and not the vehicle and, therefore, the case did not support Amerisure’s argument. Since the ACIA policy insured Mr. Madar’s health and not his specific automobile, the *Madar* Court stated that PIP coverage “protects the person, not the motor vehicle.” The Court also indicated that *Universal Underwriters* reaffirmed that PIP benefits applied to the person and not the vehicle and, therefore, the case did not support Amerisure’s argument.

Farm Bureau presents an extensive argument in favor of interpreting the No-Fault Act in accordance with the Financial Responsibility Act. This analysis is unnecessary, however, given the fact that the No-Fault Act was enacted more recently. This fact, as the Court of Appeals pointed out, means that the No-Fault Act has precedence over the Financial Responsibility Act. **(Exhibit B - p. 8)** Furthermore, since the language of the statute is plain and unambiguous, there is no need to interpret the language of the statute any further. The Court of Appeals found this to be the case as well. **(Exhibit B - p. 8)** Since the statute does not need to be interpreted any further, Farm Bureau’s analysis of the meaning of the term “insurer” is irrelevant.

**C. Despite the substantial effect on insurance companies or their underwriting policies, prior case law mandates the holding of the Court of Appeals.**

Farm Bureau argues that the holding below will result in insurance carriers being held responsible for the risks that they never assumed, were unaware of, and did not receive a premium for. Admittedly, this case and its predecessors, particularly *Pioneer*, have resulted in an increase in litigation and confusion regarding liabilities under the priority provisions of the No Fault Law. Carriers had previously read §3114 and §3115 as relating the terms “insurers of” and “the insurer of” with the phrases “motor vehicles involved in the accident” or “the owner/operator of the motor vehicle involved in the accident” as pro-dependent. That is, the phrases referred as limiting the potentially responsible insurer to be insurer of the vehicle involved in the accident, which is consistent with the language from the policies which were at risk. Indemnifying the known risk in return for the payment of a

premium is the essence of commercial insurance.

Nonetheless, published case law from the Court of Appeals in *Pioneer, supra*, has interpreted the No-Fault Statute as requiring coverage for unknown, uninsured vehicles for which no premium has been paid, under MCL 500.3115. The No-Fault Statute should be read consistently throughout the priority provisions to insure quality of interpretation. Since the language between §3115 and §3114 are similar, and are to be read consistently, the holding in *Pioneer* mandates the same holding throughout the priority provisions. Although it might be difficult to underwrite new, unknown potential risks for which a premium has been paid, this is consistent with the reading of the statutes provided in *Pioneer*.

**D. The lower court’s reliance on *Pioneer* is correct because the language of MCL 500.3114(5)(a) is materially similar to the language of MCL 500.3115.**

There are only two differences between MCL 500.3115 and 500.3114(5)(a). The first of these differences is to whom each statute applies. This alone does not provide any rationale for a interpretation of the statutes.

The second difference between these two statutes is that §3.114(5)(a) uses the definite article “the” and §3115 uses the plural forms. As stated previously, the change in language is easily explained by the different type of injured party that each statute applies to. §3114(5) applies to a party that is injured while an operator or passenger of a motorcycle. Presumably, most motorcycle accidents involving a motor vehicle will involve one motorcycle and one motor vehicle. Thus, the singular article “the” is appropriate.

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§3115 deals with pedestrians suffering accidental bodily injury as the result of a motor vehicle accident. Presumably, pedestrians can be injured because of an accident involving just one motor vehicle, or from accidents involving more than one motor vehicle. The strong possibility of being injured as a result of an accident involving multiple motor vehicles is the reason the legislature used plurals in that statute.

In *Pioneer*, the Court of Appeals stated that the "statutory language clearly states that **the insurer of the owner or registrant of the motor vehicle involved in the accident is liable for payment of personal protection insurance benefits.**" In interpreting MCL 500.3115(1), the Court uses the exact words contained in MCL 500.3114(5)(a). Since there is no material difference in the language of these two statutes, the Court of Appeals was correct in applying *Pioneer*.

**II. THE LOWER COURTS DID NOT REVERSIBLY ERR EVEN IF THEY DID CONSTRUE FARM BUREAU'S POLICY CONTRARY TO ITS UNAMBIGUOUS TERMS, SINCE THE ISSUE AT HAND IS A STATUTORY MATTER, NOT A CONTRACTUAL ONE.**

**A. Standard of Review**

As stated in Farm Bureau's Application, page 23, "This Court reviews *de novo* a grant or denial of summary disposition. *Quality Products, supra*, 469 Mich at 369. This Court also reviews questions of contract interpretation *de novo*. *Rednour v Hastings Mutual Ins. Co.*, 468 Mich 241, 243; 661 NW2d 562 (2003)."

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**B. The lower courts chose not to interpret the language of the insurance contract because it is irrelevant to the case at hand.**

Farm Bureau's analysis of the policy issued to Mr. Petiprin is irrelevant. As the Court of Appeals pointed out, if MCL 500.3114(5)(a) requires Farm Bureau to cover the loss in question, this statute prevails over any contract provisions. (Exhibit B - p.8) As has been previously stated, under the state of the current case law, the Court of Appeals interpretation of §3114(5)(a), requiring Farm Bureau to pay for Mr. Osentoski's loss pursuant to statute is correct.

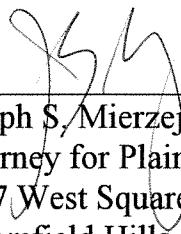
**CONCLUSION**

For the reasons stated above, Plaintiff/Appellee Farmers Insurance Exchange respectfully requests the Court to grant Defendant/Appellant's Application for Leave to Appeal, but to find in its favor on the merits and uphold the Trial Court's December 2, 2004 Declaratory Judgment and the Court of Appeals Opinion of August 17, 2006.

Respectfully submitted,

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