STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
The Honorable Jane M. Beckering, Stephen L. Borrello and Peter D. O'Connell

MATTHEW DYE, by his Guardian SIPORIN & ASSOCIATES, INC.,

Plaintiff-Appellee,

Supreme Court No. 155784

-vs-

COA Court No. 330308

PRIORITY HEALTH,

Lower Court No. 14-516-NF

Defendant/Cross Plaintiff-Appellee,

-vs-

GEICO INDEMNITY COMPANY,

Defendant/Cross-Defendant-Appellant,

and

ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant/Cross Defendant-Appellee,

-and-

BLUE CROSS BLUE SHIELD OF MICHIGAN

Defendant-Appellee.

REPLY BRIEF OF PLAINTIFF/CROSS-PLAINTIFF APPELLANT

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ARGUMENT

I. THE TEXT OF MCL 500.3113(3)(b) ONLY DISQUALIFIES AN OWNER IF "THE SECURITY REQUIRED BY SECTION 3101 WAS NOT IN EFFECT". IT DOES NOT REQUIRE THAT THE SECURITY BE PROVIDED BY AN OWNER. THEREFORE, IF "SECURITY FOR PAYMENT OF BENEFITS UNDER PERSONAL PROTECTION INSURANCE" IS IN EFFECT ON THE VEHICLE, SECTION 3113(b) EXCLUSION DOES NOT APPLY.

In its Brief on Appeal, Plaintiff accurately and adequately set forth the correct statutory and decisional analysis on this issue. Plaintiff will limit this Reply Brief to pointing at the major flaw in GEICO's statutory argument, and to refuting the additional arguments which were not addressed in Plaintiff's principal Brief.

The major inadequacy of GEICO's textual analysis is that it ignores the "last antecedent" canon of statutory construction, thereby avoiding having to analyze the actual text of MCL 500.3113(b). The unambiguous language of that provision requires **only** that the security be "in effect".

As a result of its failure to follow the relevant contextual canon of statutory construction, GEICO **adds** the requirement that the "what" (security required) be procured by a particular "who" (owner/registrant). That reads into §3113(b) something which is simply not in its text.

Plaintiff's interpretation – which was explicitly adopted in *Iqbal v Bristol West. Ins. Group*, 278 Mich App 31, 39-40 (2008) – is confirmed by reference to MCL 500.3102(2). That statute expressly penalizes noncompliant owners/registrants for not purchasing insurance. It demonstrates that the Legislature knew how to include noncompliant owners/registrants in a punitive statute, and could easily have added disqualification language to §3102(2) if it

had wanted. Instead, it chose markedly different language for §3113(b), which indicates a different intent.

The gist of the remainder of GEICO's argument is that the rule invented by *Barnes v Farmers Ins. Exchange*, 308 Mich App 1, 8 (2014), is necessary to allow insurers to accurately assess their risks. That argument should be rejected for two independent and alternative reasons.

First, it is conceptually irrelevant to the issue before this Court. Plaintiff was not denied coverage because the policy was void for lack of an insurable interest. Nor was it denied because of misrepresentation in the application. Indeed, the very problem with *Barnes* is that it eliminates coverage even when neither of those grounds exist.

Secondly, GEICO suggests that the *Barnes* invented requirement that an owner must be a named insured on the policy is necessary to avoid misrepresentation and fraud in applications for insurance. The suggestion is that people with bad driving records or living in areas with higher premiums will misrepresent facts to secure cheaper insurance. It is simply unnecessary. If there is fraud or misrepresentation in the acquiring of insurance, there is established case law allowing the insurers to rescind, reform or cancel policies secured by fraud or misrepresentation. *Titan Ins. Co. v Hyten*, 491 Mich 547, 618 NW2d 562 (2012).

There is no evidence on this record of fraud or misrepresentation by the Dye family in securing insurance from either GEICO or Esurance. There is settled case law to deal with fraud or misrepresentation. There is no reason to misinterpret MCL 3113(b)'s exclusion to address a problem that has already been addressed by general contract and equitable remedies.

In sum, GEICO has been unable to muster a defense of the *Barnes* decision for a simple reason: It is textually indefensible. This Court should overrule it.

Dated: April 10, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on *April 10, 2018*, I electronically filed the Reply Brief of Plaintiff/Cross Plaintiff-Appellant, Matthew Dye, by his Guardian, Siporin & Associates, Inc., with the Clerk of the Court using the TrueFiling system which will send notification of such filing to the following: Drew W. Broaddus, Christina A. Ginter, Sarah L. Walburn, Susan Healy Zitterman, Marcy A. Tayler, Jesse A. Zapczynski, and by regular mail to Leo A. Nouhan.

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