# STATE OF MICHIGAN

# COURT OF APPEALS

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WILLIAM R. BLEDSOE, CHRISTINA M. BLEDSOE, KAYLA BLEDSOE, and AUSTIN BLEDSOE,

Plaintiffs-Appellees,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant

and

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH,

Defendant-Appellee.

UNPUBLISHED
December 4, 2003

No. 236735
Wayne Circuit Court
LC No. 99-926077-NO

ON REMAND

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Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

In this case involving a dispute about insurance coverage, defendant Auto Owners Insurance Company originally appealed by leave granted from the circuit court's order denying its motions for partial summary disposition. We affirmed in part, concluding that, under the terms of the relevant insurance policy and according to plaintiff's[1] deposition testimony, plaintiff was an "occupant" of a vehicle insured by Auto Owners at the time he suffered injuries in an automobile accident.[2] We thus concluded that plaintiff was entitled to seek personal injury protection (PIP) benefits from Auto Owners. Auto Owners appealed to the Supreme Court,

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[1] "Plaintiff" in this opinion refers to plaintiff William Bledsoe.

[2] The additional issues and sub-issues on which we ruled in our initial opinion have not been disturbed by virtue of the Supreme Court's remand order (discussed *infra*) and are thus not pertinent to the instant opinion.

which remanded the case back to us to reconsider our opinion in light of *Rednour v Hastings Mut Ins Co*, 468 Mich 241; 661 NW2d 562 (2003) (*Rednour II*). We once again affirm with respect to the issue of PIP benefits.

We set forth the following facts in our original opinion:

> Plaintiff drove a truck for his uncle, Mitchell Bledsoe, owner of Bledsoe Trucking, hauling freight for CTX, a freight broker, and was returning to Michigan from a delivery in Canada when he was stopped at customs. Plaintiff testified that after he stopped the truck, he exited the vehicle to retrieve some change out of his pants pockets in order to pay a toll, at which point a quarter rolled underneath the truck. He stated that as he knelt down to retrieve it, balancing himself with one hand on the step of the truck, a different truck ran over his right foot and pulled away. The identities of the second vehicle and its driver were never determined.
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> Plaintiff suffered injuries to his foot, and he and his relatives therefore sued Auto Owners, the insurer of Bledsoe Trucking, to recover PIP . . . benefits . . . . Auto Owners filed two motions for partial summary disposition, arguing that plaintiff was not an "occupant" of the parked truck at the time of the accident and was therefore not entitled to recover certain benefits. . . . The trial court . . . denied Auto Owners' motions for partial summary disposition. [*Bledsoe v Auto Owners Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued April 24, 2003 (Docket No. 236735), slip op, pp 1-2 (footnote omitted).]

We concluded that plaintiff was not entitled to PIP benefits under the no-fault act because, for purposes of that act, he was not an "occupant" of the truck at the time of the accident. *Id.* at 2. We then stated the following:

> . . . as noted in *Rednour v Hastings Mut Ins Co*, 245 Mich App 419, 422; 628 NW2d 116 (2001) [*Rednour I*], [rev'd by *Rednour II, supra*,] a policy of insurance may provide broader coverage than that mandated under the no-fault act. In that circumstance, the insurance policy, rather than the statutory provisions of the no-fault act, governs coverage. *Id*.
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> Here, Auto-Owners' insurance policy excludes PIP benefits for "bodily injury arising out of the ownership, operation, maintenance, or use of a parked motor vehicle unless . . . the bodily injury was sustained by the injured person while occupying the motor vehicle." The no-fault endorsement defines "occupying" as "in or upon or entering into or alighting from a motor vehicle." Under these policy terms, plaintiff was an occupant of the vehicle according to his deposition testimony.
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> In *Rednour* [*I*], *supra* [at] 424, we considered a policy that defined "occupying" as "in, upon, getting in, on, out or off." The *Rednour* [*I*] Court, citing *Rohlman v Hawkeye-Security Ins Co (On Remand)*, 207 Mich App 344, 357; 526 NW2d 183 (1994) (*Rohlman II*), stated that the term "upon" does not require that an object or person be positioned so that the object or person is totally

> and completely in contact with or supported by the underlying object or person. Rather, "the term 'upon' in the definition of 'occupying' means, at a minimum, some physical contact with the covered auto." *Id*. The facts of this case, viewed in the light most favorable to plaintiff, demonstrate that plaintiff qualifies for the recovery of PIP benefits, because, according to his testimony, he was resting his hand on the truck in question and thus "occupying" it at the time of the accident. Accordingly, the trial court properly denied Auto Owners' motion for partial summary disposition based on the argument that plaintiff was not occupying the vehicle at the time of the accident. [*Bledsoe, supra* at 2-3 (footnote omitted).]

The Supreme Court's opinion in *Rednour II* does not change our holding. In *Rednour II*, a case in which the plaintiff was not touching the insured vehicle immediately before the accident but was thrown into the insured vehicle when another vehicle hit him, see *Rednour II, supra* at 242, the Court narrowed the definitions of "upon" and "occupying" as follows:

> Plaintiff suggests that he was "upon" the car because he was pinned against it after being struck. Physical contact by itself does not, however, establish that a person is "upon" a vehicle such that the person is "occupying" the vehicle. The relevant dictionary definitions discussed above clarify that one must be *on* or *up and on* a vehicle in order to be "upon" it. We reject the dicta in *Rohlman II* that suggests physical contact alone may be sufficient to show that the person was "upon" the vehicle so as to be "occupying" the vehicle. [*Id.* at 249-250 (emphasis in original; footnotes omitted).]

In the instant case, plaintiff testified that he was balancing himself with one hand *on the step of the insured truck* when the accident occurred. Even under the *Rednour II* Court's restricted definitions, plaintiff was, according to his testimony, "upon" the truck at the time of the accident. We believe that a commonsense interpretation of the term "upon" leads to this conclusion. Moreover, the Supreme Court in *Rednour II* indicated (1) that one must be "on" a vehicle to be "upon" it and (2) that a dictionary is an appropriate reference tool in giving meaning to the terms at issue here. See *id.* at 250. *Random House Webster's College Dictionary* (1997) lists the following as the first definition of "on": "so as to be or remain supported by or suspended from." Plaintiff testified that he was balancing himself with one hand on the step of the truck when the accident occurred. If the factfinder were to believe plaintiff's testimony, then (1) plaintiff clearly was being "supported by" the truck, (2) he therefore was "occupying" the vehicle under the terms of the Auto Owners' policy, and (3) the parked vehicle exclusion in policy does not apply. The trial court properly denied summary disposition to Auto Owners with respect to the issue of PIP benefits.[3]

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[3] In *Rednour II, supra* at 249, the Supreme Court stated, "We need not reach the question . . . whether a policy may provide coverage broader than that required by the no-fault act . . . [because p]laintiff was not 'occupying' the vehicle under the policy definition of that term." Given the Supreme Court's failure to rule on the issue, we remain with our original conclusion in *Bledsoe, supra* at 2, that "a policy of insurance may provide broader coverage than that (continued…)

Affirmed.

/s/ Jane E. Markey
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

(…continued)

mandated under the no-fault act. In that circumstance, the insurance policy, rather than the statutory provisions of the no-fault act, governs coverage."