STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN INSURANCE COMPANY,
~~a Michigan Insurance Company,~~

Plaintiff-Appellee,

v

NATIONAL LIABILITY & FIRE INSURANCE COMPANY, ~~a foreign corporation, licensed to do business in the State of Michigan,~~

Defendant-Appellant.

Supreme Court No. 144792

Court of Appeals No. 301980

Oakland County Circuit Court
No. 09-104725-NF

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NOTICE OF HEARING

APPLICATION FOR LEAVE TO APPEAL

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ORDERS APPEALED AND RELIEF SOUGHT

This is a priority dispute between two no-fault insurers. LAWRENCE S. STUBBE was seriously injured when he was struck as a pedestrian by a vehicle insured by MICHIGAN INSURANCE COMPANY ("MIC"), which paid his no-fault benefits. At the time, MR. STUBBE was a resident at an incorporated adult foster care facility insured by NATIONAL LIABILITY & FIRE INSURANCE COMPANY ("NATIONAL LIABILITY"). The NATIONAL LIABILITY policy defined "insured" to include a "ward" of the named insured. MIC filed suit, arguing that MR. STUBBE was a "ward" of the facility, and therefore that NATIONAL LIABILITY was in a higher order of priority than MIC. NATIONAL LIABILITY argued that a corporation cannot have a ward, and that in any event MR. STUBBE was not, in fact, a ward of the facility.

On October 20, 2010, the trial court granted MIC's motion for summary disposition and denied NATIONAL LIABILITY's. On December 20, 2010, the trial court entered a judgment awarding MIC $848,678.90, and ordered NATIONAL LIABILITY to assume responsibility for MR. STUBBE's benefits going forward.

NATIONAL LIABILITY appealed to the Court of Appeals. On February 14, 2012, that Court issued an unpublished opinion reversing the Judgment and remanding for a trial on the issue whether MR. STUBBE was a "ward" of the facility. However, the panel declined to address NATIONAL LIABILITY's arguments that it is entitled to judgment in its favor as a matter of law, and that at most it may be liable for 50% of the benefits.

NATIONAL LIABILITY seeks an order from this Court remanding this case to the Court of Appeals for consideration of the other two issues

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presented by NATIONAL LIABILITY. In the alternative, NATIONAL LIABILITY seeks an order granting leave to appeal, and an opinion holding that, as a matter of law, a corporation cannot have a ward, and, therefore, NATIONAL LIABILITY's policy provides no coverage in the instant case. In the alternative, NATIONAL LIABILITY seeks a holding that, at most, it might be liable for 50% of MR. STUBBE's benefits.

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STATEMENT OF JURISDICTIONAL BASIS

On October 20, 2010, the trial court granted MIC's motion for partial summary disposition, and denied NATIONAL LIABILITY's motion for summary disposition. On December 20, 2010, a Judgment was entered awarding MIC $848,678.90, and further ordering that NATIONAL LIABILITY assume responsibility for payment, processing and handling of all claims and bills submitted on behalf of Lawrence Stubbe.

Defendant filed a Claim of Appeal to the Court of Appeals on January 7, 2011. On February 14, 2012, that Court issued an unpublished opinion (Appendix N) reversing the Judgment and remanding for a trial on the issue whether MR. STUBBE was a "ward" of MIC's insured. The panel declined to address NATIONAL LIABILITY's arguments that it is entitled to judgment in its favor as a matter of law, and that at most it may be held liable for 50% of the benefits.

This Court has jurisdiction over this appeal pursuant to MCR 7.301(A)(2).

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STATEMENT OF QUESTIONS PRESENTED

I. DOES THE BUSINESS AUTO POLICY ISSUED TO A CORPORATION WHICH OPERATED AN ADULT FOSTER CARE FACILITY PROVIDE FIRST-PARTY NO-FAULT COVERAGE TO A RESIDENT OF THAT FACILITY WHO WAS NOT INJURED AS A RESULT OF THE OPERATION OF THE INSURED VEHICLE BECAUSE THE RESIDENT WAS A WARD OF THE CORPORATION WITHIN THE MEANING OF THE POLICY LANGUAGE?

The trial court answered, "Yes".

The Court of Appeals refused to address this question.

Plaintiff-Appellee contends that the answer should be, "Yes".

Defendant-Appellant contends that the answer should be, "No".

II. EVEN IF MR. STUBBE COULD BE A WARD OF THE CORPORATE NAMED INSURED, IS NATIONAL LIABILITY IN A HIGHER ORDER OF PRIORITY THAN MIC BECAUSE MR. STUBBE IS NOT THE PERSON NAMED IN NATIONAL LIABILITY'S POLICY, THE PERSON'S SPOUSE, OR A RELATIVE OF EITHER DOMICILED IN THE SAME HOUSEHOLD WITHIN THE MEANING OF MCL 500.3114(1)?

The trial court did not address this question.

The Court of Appeals refused to address this question.

Plaintiff-Appellee contends that the answer should be, "Yes".

Defendant-Appellant contends that the answer should be, "No".

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STATEMENT OF FACTS

This is a first-party no-fault case. The principal question is which of two insurers is responsible for the payment of no-fault benefits on behalf of LAWRENCE S. STUBBE, who was struck as a pedestrian by a motor vehicle insured by MICHIGAN INSURANCE COMPANY ("MIC"). The trial court granted summary disposition in favor of MIC and ordered NATIONAL LIABILITY to reimburse MIC almost $850,000 and to pay MR. STUBBE's present and future benefits.

The Court of Appeals reversed the grant of summary disposition and remanded the case for a trial on whether MR. STUBBE was, in fact, a ward of the facility. However, the panel refused to address NATIONAL LIABILITY's arguments that (1) as a matter of law, MR. STUBBE could not be a ward of the corporate named insured; and (2) MCL 500.3114(1) does not relieve MIC of liability because MR. STUBBE was not "the person named in the [NATIONAL LIABILITY] policy, the person's spouse, [or] a relative of either".

The pertinent facts follow.

Historical Facts: Pre-Accident

MR. STUBBE was a homeless person with a 40-year drinking problem. (STUBBE Dep [Appendix A], p 7, 10, 11-12). Easter Seals had gotten him into a 3/4 house for substance abuse treatment. (Id., p 8, 9). He admitted himself to that facility, but was kicked out for drinking. (Id., p 8, 12).

MR. STUBBE lived on the street for three weeks before Easter Seals got him into Quality AFC on August 27, 2008. (Appendix A, p 7-8; BITEW Dep [Appendix C], p 9). Quality AFC is a corporation which ran an adult foster care facility in Pontiac, Michigan. (DENEKE Dep [Appendix B], p 5, 6; Appendix C, p 5). The facility consisted of two adjacent houses, each of which had 10 bedrooms. (Appendix B, p 13). One bedroom had four beds, the others had two or three. (Id., p 14). There were eight to ten employees working in three shifts. (Id., p 9).

The facility was licensed by the State of Michigan to provide adult foster care for mentally challenged or developmentally disabled people. (Appendix B, p 6-7; Appendix C, p 8). MR. STUBBE was at the home because of his "special needs or challenges". (Appendix C, p 36).

Breakfast, lunch, and dinner were provided, but the residents were not required to eat at the facility and could sign out and eat elsewhere. (Appendix B, p 14; Appendix C, p 22-23, 27). The facility also dispensed medicine to those residents who had prescriptions. (Appendix B, p 15-16). The owners testified that MR. STUBBE had a prescription, but did not indicate what it was for. (Appendix B, p 15; Appendix C, p 18).

The facility had house rules (Appendix D) to let residents know what was expected of them. (Appendix B, p 10-11; Appendix C, p 12-13). There was a sign-out sheet (Appendix E) on which residents leaving the premises would indicate where they were

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going and what time they would return. (Appendix A, p 14; Appendix B, p 9-10).

The residents had various levels of functioning. (Appendix B, p 21). Some had guardians; others were relatively independent. (Id., p 21-22; Appendix C, p 25, 33). The latter category required little supervision and could come and go as they pleased. (Appendix B, p 23). MR. DENEKE, one of the owners, explained that he had no authority to stop them. (Id., p 23-24). He elaborated:

> "Q But, again, you and your staff don't have the power to stop Mr. Stubbe from leaving?
>
> "A No; no, no. We can't stop nobody unless they are really low function, they would be danger to themself, that time we, you know, we're involved. **But if they are high function**, the only thing required, sign out, have fun, come back. You know, **we don't have any control; the state even, they don't allow us**."

(Appendix B, p 31) (emphasis added).

His wife and co-owner, MS. BITEW, said that residents were free to drink alcohol off the premises because "there's no control for us to [prevent] that". (Appendix C, p 29). MR. STUBBE added that there was no daily regimen at the facility. (Appendix A, p 13).

MS. BITEW testified that MR. STUBBE was not mentally challenged. (Appendix C, p 30). Both she and her husband characterized him as "very high functioning", "very independent". (Appendix B, p 24, 25; Appendix C, p 25, 35). He communicated lucidly. (Appendix B, p 30; Appendix C, p 26). He knew what he was doing

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and where he was going. (Appendix B, p 24). He was able to take care of his personal needs. He did not need a special diet. He had no physical limitations. (Appendix C, p 31). He managed his own money. (Appendix B, p 20-21, 27). He never had a guardian or conservator. (Appendix A, p 9-10; Appendix B, p 27; Appendix C, p 34).

Most of the time MR. STUBBE was not at the facility. (Appendix C, p 32). Almost every day he went out and walked around the city. (Appendix B, p 25-26; Appendix C, p 26). MS. BITEW never saw him spend the whole day on the premises. (Appendix C, p 28). He came and went as he pleased, returning to take his medication. (Appendix B, p 26; Appendix C, p 26). His movements were not restricted in any way. (Appendix A, p 14-15).[1]

The Accident and Sequella

On December 27, 2008, MR. STUBBE was injured when he was struck by a motor vehicle insured by MIC. (Complaint, ¶¶4, 7). On January 19, 2009, MR. STUBBE submitted an application for no-fault benefits to MIC, which paid his medical expenses. (Id., p 8-9). MCL 500.3115(1)(a).

NATIONAL LIABILITY had issued a commercial policy (Appendix F) to Quality AFC which included business auto coverage on a 2000 Dodge Van which was used to transport residents to doctor ap-

[1]Unbeknownst to the people at Quality AFC, MR. STUBBE would obtain Vicodin on the street to get high. (Appendix A, p 12-13, 15).

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pointments or work (Appendix B, p 16-18; Appendix C, p 19-20). The only named insured was Quality AFC Home Corp, a corporation. (Appendix F: Business Auto Coverage Declarations). The policy contained a Michigan no-fault endorsement which defined an insured as follows:

> "**B. Who Is An Insured**
>
> "**1.** You or any 'family member'.
>
> "**2.** Anyone else who sustains 'bodily injury':
>
> "**a.** While 'occupying' a covered 'auto';
>
> "**b.** As the result of an 'accident' involving any other 'auto' operated by you or a 'family member' if that 'auto' is a covered 'auto' under the policy's Liability Coverage; or
>
> "**c.** While not 'occupying' any 'auto' as a result of an 'accident' involving a covered 'auto'."

(Appendix F: Michigan Personal Injury Protection Endorsement [ISO Form CA 22 20 11 06], p 2 of 4).

The policy defined "you" as follows:

> "Throughout this policy the words 'you' and 'your' refer to the Named Insured shown in the Declarations."

(Appendix F: Business Auto Coverage Form [ISO Form CA 00 01 03 06], p 1 of 12).

The policy defined "family member" as follows:

> "'Family member' means a person related to you by blood, marriage or adoption who is a resident of your household, **<u>including a ward</u>** or foster child."

(Appendix F: Michigan Personal Injury Protection Endorsement, p 4 of 4) (emphasis added).

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The total annual premium for the PIP coverage was $284. (Appendix F: Business Auto Coverage Declaration (Form NLF-4667b [07/2006]).

On October 9, 2009, MIC filed the Complaint in the instant case, alleging that by virtue of the policy it issued to Quality AFC, NATIONAL LIABILITY might be in a higher order of priority than MIC for payment of MR. STUBBE's no-fault benefits. The parties filed cross-motions for summary disposition. The central issues argued were whether MR. STUBBE could be or was a "ward" of Quality AFC. (10/20/10 Tr, p 4).

On October 20, 2010, the trial court issued an Opinion and Order (Appendix G), ruling that NATIONAL LIABILITY must reimburse MIC for all expenditures paid by the latter, and must assume liability for all present and future benefits. On December 20, 2010, the trial court entered a Judgment (Appendix H) in favor of MIC in the amount of $848,678.90.

The Court of Appeals reversed the grant of summary disposition and remanded the case for a trial on whether MR. STUBBE was, in fact, a ward of the facility. (Appendix N). However, the panel refused to address NATIONAL LIABILITY's arguments that (1) as a matter of law, MR. STUBBE could not be a ward of the corporate named insured; and (2) MCL 500.3114(1) does not relieve MIC of liability because MR. STUBBE was not "the person named in the policy, the person's spouse, [or] a relative of either". (Id., p 3).

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I. THE BUSINESS AUTO POLICY ISSUED TO A CORPORATION WHICH OPERATED AN ADULT FOSTER CARE FACILITY DOES NOT PROVIDE FIRST-PARTY NO-FAULT COVERAGE TO A RESIDENT OF THAT FACILITY WHO WAS NOT INJURED AS A RESULT OF THE OPERATION OF THE INSURED VEHICLE BECAUSE A CORPORATION CANNOT HAVE A WARD WITHIN THE MEANING OF THE POLICY LANGUAGE.

This issue has been litigated in numerous sister state cases. The vast majority of them have held that a corporation cannot have family members, and that an individual therefore cannot recover under a policy issued to a corporation as a named insured. The Court of Appeals so held in Michigan Township Participating Plan v Pavolich, 232 Mich App 378 (1988). However, in USF&G v Citizens Ins Co, 241 Mich App 83 (2000), the Court of Appeals held that a corporation can have a ward. NATIONAL LIABILITY submits that USF&G was wrongly decided, and that this Court should overrule it.

Preservation

This issue was presented in NATIONAL LIABILITY's Cross-Motion for Summary Disposition.

Standard of Review

The interpretation of language in an insurance policy is a question of law for this Court's de novo review. Allstate Ins Co v Muszynski, 253 Mich App 138, 140-141 (2002).

Discussion

The decision in USF&G v Citizens Ins Co, supra, imposed liability for no-fault benefits on the insurer of a vehicle owned by a corporation which operated an adult foster care home at

which the injured person resided. The majority opinion in USF&G relied on Hartman v Insurance Company of North America, 106 Mich App 731 (1981), despite the fact that the named insured in the latter case was not a corporation but rather was an individual.

Moreover, the USF&G majority never analyzed the question whether a corporation can have a ward. It simply quoted the trial court's ruling, the relevant portion of which reads as follows:

> "'[A] corporation can sue in its own name. It's considered as a person for purposes of suits, for purposes of owning property, et cetera, and **I don't see any reason why they can't have wards**."
>
> * * * *
>
> "**And I don't find that because it's a corporation, that that says that they can't have a ward. And I don't know any case law that says that, either; and it's not so obvious to me that there wouldn't be some case law needed to be put on this**."

241 Mich App at 88-89 (emphasis added). That is not a very insightful analysis.[2]

The dissent in USF&G referenced sister state case law and squarely rejected the notion that a corporation can have a "ward" as a "family member". Id. at 90.

NATIONAL LIABILITY submits that USF&G was wrongly decided and should be overruled. In the following discussion, it will

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[2]The only Michigan decision citing USF&G for the proposition that a corporation can have a ward likewise undertook no substantive analysis of the issue. It merely recited the proposition in the course of determining whether the injured person fit the definition of "ward". Mager v Lloyd-Lee, unpublished per curiam opinion of the Court of Appeals, rel'd 11/2/06 (No. 264796) (Appendix I), slip op at 3.

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demonstrate that settled principles of contract construction support two independent and alternative reasons why MR. STUBBE is not covered under NATIONAL LIABILITY's policy in the circumstances of this case: (1) at the first level of analysis, a corporation cannot have any "family members"; and (2) even if a corporation could have "family members", NATIONAL LIABILITY's policy language limits the term "ward" to a person included as part of a group of human beings who are related to each other by blood, marriage or adoption.

We start with the definition of "an insured":

"B. Who Is An Insured

"**1**. You or any 'family member'."

Family Member. The term "family member" is plainly limited to a "family member" of "you". However, the Court of Appeals has held that, as a matter of law, a corporation cannot have a "family member". In Michigan Township Participating Plan v Pavolich, supra, a police officer employed by the Village of Lake Linden was injured making a traffic stop when he was dragged by the car that he stopped. He made a claim for underinsured motorist coverage under a policy issued to the village. The trial court ruled in favor of the officer. Id. at 379-80. The Court of Appeals reversed.

The here relevant holding was the panel's adoption of the majority view that a corporation cannot have "family members".

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232 Mich App at 384-387.[3] Pavolich is consistent with the rule in the "vast majority" of jurisdictions, Foote v Royal Ins Co, 88 Hawai'i 122, 962 P2d 1004, 1006-07 (1998)[4], which hold that (1) a corporation cannot have family members, and (2) the fact that "family member" coverage cannot exist under a policy because the named insured is a corporation does not render the policy ambiguous. E.g., American States Ins Co v C&G Contracting, Inc, 186 Ariz 421, 924 P2d 111, 113 (Ariz App 1996); Foote, supra at 1007; Huebner v MSI Ins Co, 506 NW2d 438, 441 (Iowa 1993); Grain Dealers Mutual Ins Co v McKee, 943 SW2d 455, 457 (Tex 1997); General Ins Co v Iselandic Builders, Inc, 24 Wash App 656, 604 P2d 966, 968 (1979).

Certain cases have found coverage on the ground that because a corporation cannot have a family member, the policy is therefore ambiguous and to be construed against the insurer. E.g., Ceci v National Indemnity Co, 225 Conn 165, 622 A2d 545 (1993); Nationwide Mutual Ins Co v Barre, 1996 WL 745842 (Conn Super

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[3]Pavolich was followed in Abay v DaimlerChrysler Ins Co, unpublished per curiam opinion of the Court of Appeals, rel'd 8/13/09 (No. 283624) (Appendix J), slip op at 3, lv gt'd, 486 Mich 1118, order vacated, lv den, 488 Mich 979 (2010).

[4]See Who is "member" or "resident" of same "family" or "household" within no-fault or uninsured motorist provisions of motor vehicle insurance policy, 66 ALR 5th 269 (1999), §§13-14. Combining the string citation in Foote with the ALR annotation yields a total of 21 jurisdictions holding that corporations cannot have family members, and five jurisdictions which have found coverage for an individual as a "family member" of a named insured corporation or partnership.

1996) (Appendix M). The short answer is that we are dealing with form policies marketed to both individuals and corporations:

> "Unlike a unique contract tailor-made to the interests peculiar to each party, the UM/UIM and PIP endorsements are standard forms crafted to accommodate a wide variety of insurance needs. Elections made by the insured may invoke or render inert various provisions of insurance endorsements. For example, Future Investments could have named a designated person in the UM/UIM endorsement, which would have created coverage for the designee as well as the designee's family members. The corporation's failure to designate such a person rendered the policy language regarding a 'designated person' and the person's 'family' inapplicable in this instance, but does not nullify the endorsements or create an ambiguity."

Grain Dealers Mutual Ins Co v McKee, 943 SW2d 455, 458-59 (Tex Sup 1997).

> "We believe that the only thing that this marketing practice suggests is that MSI's business auto policies were written so as to be marketable to either individual proprietorships or to corporations. Assuming that individual proprietorships received certain coverages that corporations did not, that is so only because the contract specifies that it is so. It does not provide a basis for extending coverage where none exists."

Huebner v MSI Ins Co, 506 NW2d 438, 441 (Iowa 1993).

In short, under Pavolich, which followed the majority rule, a policy issued to a corporation as the "named insured" provides no "family member" coverage. Therefore, MR. STUBBE cannot be an insured under the policy issued by NATIONAL LIABILITY.

Ward. The foregoing discussion provides ample basis for reversing the trial court. However, even if this Court is inclined to go to the second level of analysis (the definition of "ward"), the result should be the same.

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The no-fault endorsement extends coverage to "you or any 'family member'". (Appendix F: Michigan Personal Injury Endorsement, p 2 of 4). It defines "family member" as:

> "a person related to you by blood, marriage, or adoption who is a resident of your household, including a ward or foster child".

As noted above, "you" in NATIONAL LIABILITY's policy is a corporation. A person cannot be related to a corporation by blood, marriage, or adoption. Pavolich, supra. The question is what "ward" means in the context of the definition of "family member" in this policy.

Policy terms must be construed in context and in accord with their commonly understood meanings. Hastings Mutual Ins Co v Safety King, Inc, 286 Mich App 287, 294 (2009); Vushaj v Farm Bureau General Ins Co, 284 Mich App 513, 516 (2009). A policy is not to be construed so as to yield an absurd result. Vushaj, supra at 516.

The syntactical format of the definition under discussion is to define a group ("a person related . . .") and then to add persons as being included within that group ("including . . ."). "Including" denotes comprising part of a group:

> "1. **being part of the group or topic just mentioned**
>
> *All you have to do is to fill in the details,* ***including*** *your name and address and the amount you wish to give*"

http://en.wiktionary.org/wiki/including

"in•clud•ed in•clud•ing

"Definition of INCLUDE

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"*transitive verb*

"1 : to shut up : ENCLOSE

"2 : **to take in or comprise as part of a whole or group**

"3 : to contain between or within <two sides and the *included* angle>

"**in•clud•able** or **in•clud•ible** *adjective*"

http://www.merriam-webster.com/dictionary/including

"**in•clude**

"*tr. v.* **in•clud•ed, in•clud•ing, in•cludes**

"1. To take in as a part, element, or member.

"2. To contain as a secondary or subordinate element.

"3. To consider with or place into a group, class, or total: *thanked the host for including us.*"

http://www.thefreedictionary.com/including

So however a "ward" might otherwise be defined in isolation, he must be capable of being part of the group in which he is included, i.e., persons related to the named insured by blood, marriage or adoption. Thus, "ward" necessarily denotes one who has as his guardian a natural person with whom he lives. Where a corporation is the named insured, no one can satisfy the definition of "ward" in the context of the policy.

Viewed from a slightly different perspective, Plaintiff's interpretation of the policy cannot be sustained because it yields an absurd result. Under Plaintiff's interpretation, MR.

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STUBBE, the purported ward, **would be "included" in a non-existent group**, which is a conceptual impossibility.[5]

In sum, USF&G, on which Plaintiff and the trial court relied, was wrongly decided and is inconsistent with a prior decision, Pavolich, which followed the majority rule. Properly and rationally analyzed, the policy under discussion does not provide coverage to MR. STUBBE as a ward because (1) a corporation cannot have a "family member", and (2) where a corporation is the named insured, there can be no coverage for a "ward" any more than there can be coverage for a non-existent spouse or relative. This Court should so hold.

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[5]Another indication that the policy did not contemplate providing PIP coverage for all residents of Quality AFC is the $284 annual premium for PIP coverage. (Appendix F: Business Auto Coverage Declarations). This Court can take judicial notice that annual PIP coverage for an insured vehicle in Michigan cost an average of $277 in 2006. (Rand Analysis [Appendix K]). MRE 201(b)-(c). This Court can also take judicial notice that more than 90% of vehicles registered in Michigan are private passenger vehicles. (Appendix L). So the $284 paid by Quality AFC is in line with the average per vehicle cost of PIP coverage in Michigan for private passenger vehicles.

However, if the trial court was correct, NATIONAL LIABILITY collected an "average" premium for an extraordinary risk. Specifically, under the trial court's ruling, the NATIONAL LIABILITY policy would provide primary PIP coverage for upwards of 35-40 adults (Appendix C, p 34) if any of them are injured in an auto accident involving any motor vehicle during the time they are residents at Quality AFC. In Bosco v Bauermeister, 456 Mich 279, 297-300 (1997), this Court noted that although not dispositive, the amount of premium collected is relevant to determining the scope of the risk assumed.

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II. EVEN IF MR. STUBBE COULD BE A WARD OF THE CORPORATE NAMED INSURED, NATIONAL LIABILITY IS NOT IN A HIGHER ORDER OF PRIORITY THAN MIC BECAUSE MR. STUBBE IS NOT THE PERSON NAMED IN NATIONAL LIABILITY'S POLICY, THE PERSON'S SPOUSE, OR A RELATIVE OF EITHER DOMICILED IN THE SAME HOUSEHOLD WITHIN THE MEANING OF MCL 500.3114(1).

Even if NATIONAL INDEMNITY's policy provided no-fault coverage for MR. STUBBE as a "ward" of Quality AFC (which it does not -- see Issue I., supra), that would not place NATIONAL LIABILITY in a higher order of priority than MIC. The reason is that MCL 500.3114(1), which MIC invokes as an exception to its obligations under MCL 500.3115(1)(a), does not apply because MR. STUBBE is not "the person named in the [NATIONAL LIABILITY] policy, the person's spouse, [or] a relative of either".

Preservation/Standard of Review

This issue was not presented in the trial court. However, it is well-established that a Michigan appellate court will consider an issue not raised in the trial court if (1) a failure to consider it would result in manifest injustice; (2) consideration of the issue is necessary for a proper disposition of the case, or (3) it presents a question of law and all of the necessary facts are of record. E.g., Laurel Woods Apts v Roumayah, 274 Mich App 631, 640-41 (2007). That principle is particularly appropriate in cases involving insurance coverage. E.g., Citizens Ins Co v Pro-Seal Service Group, 268 Mich App 542, 547 (2005); Michigan Millers Mutual Ins Co v West Michigan Health

Care Network, 174 Mich App 196, 198-99 (1988); ACIA v Page, 162 Mich App 664, 666-67 (1987).

This issue satisfies all three of the alternative conditions for review. It involves a question of statutory interpretation, which is one of law for this Court's de novo review. Detroit v Ambassador Bridge Co, 481 Mich 29, 35 (2008). A failure to consider it will result in the manifest injustice of NATIONAL LIABILITY being subjected to an $850,000 obligation, one-half of which the relevant statute defines as belonging to MIC. Finally, consideration of the issue is necessary to a proper disposition of the case, because the statute defines the answer to the question presented: Which insurer is responsible for the payment of MR. STUBBE's benefits? This Court should therefore address this issue.

Discussion

MR. STUBBE was injured while a pedestrian. Therefore, the following provision applies:

> "(1) **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.
>
> "(b) Insurers of operators of motor vehicles involved in the accident."

MCL 500.3115(1)(a)-(b) (emphasis added).

In terms, the statute imposes liability for no-fault benefits on MIC as the insurer of the owner of the vehicle which

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struck MR. STUBBE **unless** §3114(1) provides otherwise. That provision reads in pertinent part as follows:

> "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."

MCL 500.3114(1) (emphasis added).

MR. STUBBE was not the "person named" in the NATIONAL LIABILITY policy. The "person named in the policy" was the named insured, Quality AFC Home Corp, a corporation. (Appendix F: Business Auto Coverage Declarations). Transamerica Ins Corp v Hastings Mutual Ins Co, 185 Mich App 249, 253 (1990) ("named insured" is "the person named in the policy"); Bierbusse v Farmers Ins Group, 84 Mich App 34, 36 (1978) (same). MR. STUBBE was not a spouse or a relative of Quality AFC, nor could he be, Michigan Township Participating Plan v Pavolich, supra at 385-88 (a corporation may not have family members). Therefore, §3114(1) does not provide an exception to §3115(1) for purposes of MR. STUBBE's benefits.

Thus, even if MR. STUBBE were a "ward" of Quality AFC, §3114(1) does not include a ward of a named insured as a person to whom the policy applies. It limits its application to "the person named in the policy, the person's spouse, and a relative of either". The No-Fault Act is the rule book for deciding questions involving the award of benefits. Rohlman v Hawkeye-

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Security Ins Co, 442 Mich 520, 524-25 (1993); Sprague v Farmers Ins Exchange, 251 Mich App 260, 266 (2002); Cruz v State Farm Mutual Automobile Ins Co, 241 Mich App 159, 164 (2000), aff'd, 466 Mich 588 (2002). Unambiguous statutory language is to be enforced as written. Tryc v Michigan Veterans' Facility, 451 Mich 129, 135-36 (1996); Rinke v Potrzebowski, 254 Mich App 411, 414 (2002). The unambiguous language of §3114(1) does not extend its application to MR. STUBBE. Therefore, §3114(1) does not provide an exception to MIC's obligations under §3115(1). If this Court determines that MR. STUBBE could be a ward of Quality AFC, this Court should hold that if that is found to be the case by the trier of fact, NATIONAL LIABILITY would be liable only for one-half of MR. STUBBE's benefits.

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REASONS FOR GRANTING LEAVE TO APPEAL OR REMANDING CASE TO COURT OF APPEALS

In both the trial court and the Court of Appeals, NATIONAL LIABILITY contended that it was entitled to judgment in its favor as a matter of law. In the Court of Appeals, NATIONAL LIABILITY also argued that, at most, it could be liable for only 50% of MR. STUBBE's benefits. The Court of Appeals declined to address either issue.

This Court should either remand this case to the Court of Appeals with instructions or grant leave to appeal for three reasons.

First, there is a conflict between Pavolich, which holds that a corporation cannot have family members, and USF&G, which held that a corporation can have a ward. Because definitionally a ward is a subset of a family, the conflict between the two cases is patent. MCR 7.302(B)(5).

NATIONAL LIABILITY pointed out to the Court of Appeals that because it was bound to follow Pavolich pursuant to MCR 7.215(J)(1) (as was the USF&G panel), the resolution of that conflict can be accomplished only by a special Court of Appeals panel, MCR 7.215(J)(2)-(3), or by this Court. Even though the issue was squarely before it, the panel in the instant case refused to address it. This Court should either direct the Court of Appeals to do so or take the issue itself.

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Second, the issue involves a legal principle of major significance to the jurisprudence of this State. MCR 7.302(B)(3). Priority disputes involving business auto policies issued to corporations are not uncommon. The conflict between Pavolich and USF&G virtually ensures that this issue will be litigated and appealed again and again. Resolving it now will further the goal of reducing the transactional costs of the no-fault system.

Third, the decision will cause material injustice to both parties. MCR 7.302(B)(5).[6] This litigation commenced more than three years ago as of this writing. (Complaint). After two years in the trial court, both parties moved for summary disposition on the ground that they were entitled to judgment as a matter of law. Central to that dispute was the legal issue of whether a corporation can have a ward within the meaning of NATIONAL LIABILITY's policy language.

Resolution of that issue in favor of NATIONAL LIABILITY would obviate the need for the trial on the issue whether MR. STUBBE was, in fact, a ward of the facility. By refusing to decide the legal issue, the Court of Appeals has directed the parties (and the trial court) to expend their time and resources trying an issue that may well be moot as a matter of law. If

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[6]The text discussion assumes clear error, see Issues I.-II., supra. Otherwise, the discussion here would be moot.

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NATIONAL LIABILITY does not prevail at trial, it will have to appeal to this Court a second time. Requiring the parties to needlessly expend time and money is manifestly unjust.

That is particularly so because the Court of Appeals had no principled reason not to address the legal issues. The first (Issue I.) was properly preserved, fully presented, and possibly case dispositive. Although a court may decline to address an issue if it is not necessary to decide the case, Kosmyna v Botsford Community Hospital, 238 Mich App 694, 702 (1999), that description does not apply to the issue under discussion. Moreover, the issue is definitely not moot, because it was imminently possible for the Court of Appeals to fashion an effective remedy, Cornell Development Co v City of Ypsilanti, 48 Mich App 261, 265 (1973), i.e., judgment in favor of NATIONAL LIABILITY as a matter of law.

The same can be said of NATIONAL LIABILITY's second legal issue. If we are going to have a trial, why not define the legal result that would be dictated by a verdict in favor of MIC? As noted above, the issue fits all three of the prerequisites for addressing an issue not presented in the trial court -- especially because it is necessary for a proper disposition of the case.

In sum, there is more than ample reason for this Court to either remand this case to the Court of Appeals with instructions

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to address the two legal issues, or to grant leave and decide them itself.

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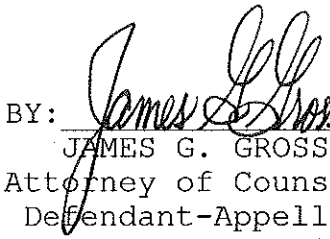
BY: 
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