

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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DEATHS SUPP

DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF

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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.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (NATIONAL LIABILITY) presents this Supplemental Brief primarily to respond to the expanded argument on this issue advanced by MICHIGAN INSURANCE COMPANY (MIC) in its Supplemental Brief.<sup>1</sup> MIC properly focuses on the language of NATIONAL LIABILITY's policy. However, its argument erroneously imports a definition of "ward" completely divorced from the context in which the term appears in NATIONAL LIABILITY's policy. It also violates a canon of contractual construction.

MIC correctly observes that corporations can be guardians, MCL 330.1628(1). (MIC Supplemental Brief, p 1-2). It then argues that MR. STUBBE is a "family member" because:

- (1) MR. STUBBE was a resident of AFC.
- (2) "Household" includes family *"and others who share the same living space"*. (Emphasis in original).<sup>2</sup>
- (3) "Family member" includes "ward".

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<sup>1</sup>In Issue I. of its Application for Leave To Appeal, NATIONAL LIABILITY demonstrated why USF&G v Citizens Ins Co, 241 Mich App 83 (2000), was wrongly decided. Accordingly, it will not here respond to MIC's Issue III.

<sup>2</sup>The import of the emphasized language is unclear. If MIC is implying that "household" includes persons other than family members, it is simply ignoring the unambiguous language of the policy.

(4) "Ward" means someone under another's protection or care.

(5) AFC agreed to provide care, supervision, and protection to MR. STUBBE.

(Id., p 6-7).<sup>3</sup> NATIONAL LIABILITY adequately set forth the correct analysis of its policy language in its Application for Leave To Appeal. It will limit itself here to two related observations which conclusively demonstrate that MIC's argument is untenable.

First, the fact that corporations are statutorily authorized to have wards is irrelevant to this issue. The question is whether a corporation can have a ward "within the meaning of the policy language". And the policy language includes ward in the context of defining a "family member". MIC never addresses the insuperable conceptual problem with its position, i.e., that a corporation cannot have family members in the first place.

The second problem with MIC's argument is related to the first. Specifically, the argument violates the contextual canon that associated words bear on one another's meaning:

"'As a general matter, words and clauses will not be divorced from those which precede and those which follow. When construing a series of terms . . . we are guided by the principle that words grouped in a list should be given related meaning.' In other words, this Court applies the doctrine of *noscitur a*

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<sup>3</sup>The remainder of MIC's argument on this issue (id., p 7-9) consists of a list of factual assertions which are supposedly "undisputed". However, most, if not all, of the relevant factual assertions are disputed. (See Answer to Application for Leave To Appeal in Supreme Court No. 144771). In any event, none of that is of any moment in the context of the issue under discussion.

*sociis*, which 'stands for the principle that a word or phrase is given meaning by its context of setting.'"

In re Rovas Complaint, 482 Mich 90, 114 (2008).

An authoritative treatise elaborated on the proper application of this canon:

"For the associated-words canon to apply, the terms must be conjoined in such a way as to indicate that they have some quality in common. . . . The common quality suggested by a listing should be its most general quality -- the least common denominator, so to speak -- relevant to the context."

Scalia & Garner, Reading Law: The Interpretation of Legal Text (Thomson/West 2012), p 196.<sup>4</sup>

NATIONAL LIABILITY's policy 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."

(Appendix F: Michigan Personal Injury Endorsement, p 2 of 4).

Excluding the term "ward" (so as to establish its context), that definition is a list of several categories of persons: those related to the named insured by blood, those related to the named insured by marriage, those related to the named insured by adoption, and foster children of the named insured. The common denominator of those categories is that they describe a relationship to a natural person, a human being. Under this contextual canon, a "ward" must therefore also have as his guardian a natural person.

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<sup>4</sup>The authors make clear that this canon applies to contracts. Id., p 51.

Thus, MIC's interpretation of the definition of "ward" creates an indefensible inconsistency in the definition -- all of the defined categories except "ward" require that a named insured be a human being. That inconsistency renders untenable MIC's argument that the policy definition includes a ward of a corporation.

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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).

MIC advances three arguments as to why it can avoid its statutory obligation to provide no-fault coverage if NATIONAL LIABILITY's policy is held to have also provided such coverage.

First, MIC (correctly) asserts that a PIP carrier "which expressly contracts to provide primary no-fault coverage" cannot avoid that liability by virtue of the priority provisions of the No-Fault Act. (MIC Supplemental Brief, p 10) (emphasis added). In the case cited by MIC, the claimant's personal vehicle was insured by Citizens. He rented a vehicle which was insured by Liberty Mutual under a policy which provided:

*"To the extent permitted by law, coverage hereunder is primary with respect to any other insurance which may be available to Customer or any of the persons provided for in Paragraph 1 hereof, and shall automatically conform to the requirements of any so-called 'No-Fault' law which may be applicable."*

Doss v Citizens Ins Co, 146 Mich App 510, 513 (1985) (italics in original) (other emphasis added).

NATIONAL LIABILITY's Michigan Personal Injury Endorsement contains no such language. Thus, even if its policy is found to provide coverage, it has not undertaken to provide primary coverage. Nothing in the endorsement can be construed as relieving MIC from its statutory obligation to provide coverage.

Next, MIC argues that because MR. STUBBE qualifies as a "ward" within the meaning of NATIONAL LIABILITY's policy (which is the predicate for this issue), he qualifies as a "relative" for purposes of §3114(1). That argument fails for two reasons.

First, the policy does not equate the term "ward" with the term "relative" (which, as such, does not even appear in the policy). The term "related" appears in the phrase "related to you by blood, marriage, or adoption". That is in accord with the generally understood meaning of "relative":

"One related by kinship, common origin, or marriage."

[www.answers.com/topic/relative](http://www.answers.com/topic/relative)

**"member of family:** a member of the same family by birth, marriage or adoption"

[www.bing.com/Dictionary](http://www.bing.com/Dictionary)

"One related by kinship, common origin, or marriage."

\* \* \* \*

**"relative** - a person related by blood or marriage;"

[www.thefreedictionary.com/relative](http://www.thefreedictionary.com/relative)

"1. a person who is connected with another or others by blood or marriage."

\* \* \* \*

"9. a person who is related by blood or marriage; relation"

<http://dictionary.reference.com/browse/relative>

The phrase "including a ward" facially references the term "family member" (which is the term being defined), rather than the phrase "related to you by blood, marriage or adoption" (which

are other persons also included in the definition of "family member").

Second, although there is some case law holding that a named insured corporation can have a ward (see Defendant-Appellant's Reply to Answer to Application for Leave To Appeal, p 2-3), MIC cites no case law for the proposition that a corporation can have relatives, as that term is generally understood.

Finally, MIC argues that because MR. STUBBE was "domiciled in the same household" as the named insured, §3114(1) therefore applies. Assuming that MR. STUBBE was so domiciled, it is of no avail to MIC unless it can demonstrate that he was married to or related by blood or marriage to AFC. MIC can make no such showing.

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