

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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144792
Reply

DEFENDANT-APPELLANT'S REPLY TO
ANSWER TO APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

FILED
APR 24 2012
CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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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. (Plaintiff's Issue II.).¹

MIC's rather diffuse response does not really come to grips with the policy language in a systematic fashion. Instead, MIC presents a number of discrete assertions. NATIONAL LIABILITY will respond accordingly.

MIC begins its presentation with a discussion of stare decisis, the point of which seems to be that the Court of Appeals' decision in USF&G v Citizens, 241 Mich App 83 (2000), should not be overruled because the test for overruling precedent has not been met. (MIC's Response, p 4-5). MIC misconstrues the doctrine.

"The rule of adherence to judicial precedence finds its expression in the doctrine of stare decisis. This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases.' William M. Lile et al., *Brief Making and the Use of Law Books*, 321 (3d ed. 1914)."

Black's Law Dictionary 1414 (7th ed 1999) (emphasis added).

¹For some reason, MIC reversed the order of the issues. NATIONAL LIABILITY presented the policy language coverage issue first because if it prevails on it, the second issue (concerning MIC's statutory liability) would be moot. NATIONAL LIABILITY will maintain its original format.

This Court has never addressed this issue. Moreover, it is not bound by a decision of the Court of Appeals. Catalina Marketing Sales Corp v Dept of Treasury, 470 Mich 13, 23 (2004). Therefore, the doctrine does not apply.

MIC next argues that if a corporation is a person, it can have family members. (MIC's Response, p 5). If so, all of the offspring would be illegitimate, because in Michigan corporations cannot marry. Const 1963, Art 1, §25; MCL 555.1.

MIC next argues that NATIONAL LIABILITY is attempting to avoid a risk that it assumed. (MIC Response, p 5-6). That is not analysis or reasoning; it is simply a statement of MIC's position. The issue presented is the scope of the risk that NATIONAL LIABILITY assumed.

MIC's accusation that NATIONAL LIABILITY ignores its policy definition (MIC Response, p 6) is amply answered by NATIONAL LIABILITY's seven-page discussion of the language and the pertinent case law (NATIONAL LIABILITY's Application, p 8-14). MIC does not even attempt such an analysis.

MIC tries to distinguish Michigan Township Participating Plan v Pavolich, 232 Mich App 378 (1998), on the ground that it was not a PIP case, but rather an action to recover uninsured motorist benefits. (MIC Response, p 6). MIC does not explain why that distinction is material. In fact, on the very next page of its brief, MIC cites two sister state uninsured motorist cases representing the minority position on the issue, Ceci v National Indemnity Co, 225 Conn 165, 622 A2d 545, 546 (1993); Progressive

Casualty Ins Co v Hurley, 166 NJ 260, 765 A2d 195, 196 (2001), effectively conceding that Pavolich is not materially distinguishable.

Finally MIC avers, without explanation, that requiring residents of adult foster care homes to seek benefits from the Assigned Claims Facility would be a "serious injustice" to those residents. (MIC Response, p 8).

In short, MIC has not responded with any coherent analysis of the relevant policy language. NATIONAL LIABILITY's presentation stands without substantial challenge.

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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's Issue I.).

MIC presents four averments which warrant brief responses.

First, the only reason MIC posits for not reviewing this issue is its assertion that no manifest injustice will occur if this Court declines to address it. However, that assertion is premised on MIC's assumption that it should prevail on the issue. But that can be determined only by analyzing the issue to decide whether that is the case. If not, unless this Court addresses the issue, NATIONAL LIABILITY will be required to pay almost \$425,000 that should have been paid by MIC, which certainly qualifies as a manifest injustice. MIC has virtually conceded that this Court should at least analyze the issue to determine whether to formally address it.

Next, MIC cites two cases for the proposition that "insurance policies cover persons, not motor vehicles". (MIC Response, p 1). However, MIC does not explain how that principle trumps the unambiguous language of MCL 500.3114(1), upon which NATIONAL LIABILITY relies.

MIC then points out that an insurer may provide broader coverage than that required by the statute. That is accurate but immaterial. This issue assumes that NATIONAL LIABILITY did

provide coverage in the instant case. The point of the issue is that MIC's statutory obligation to provide benefits remains.

For that same reason, MIC's accusation that NATIONAL LIABILITY is attempting to avoid its contractual obligation is categorically false. Indeed, it is MIC who is attempting to avoid its statutorily imposed legal obligation to pay benefits without giving this Court any reason why it should be allowed to do so.

In short, NATIONAL LIABILITY's original presentation of this issue stands literally unanswered.

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