

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

EMPLOYERS INSURANCE COMPANY
OF WAUSAU, a Wisconsin corporation,

Plaintiff,

vs.

Case No. 13-11387-CKB

HON. CHRISTOPHER P. YATES

HEARTHSTONE SENIOR SERVICES, LP,
a Texas corporation; HEARTHSTONE, GP,
INC., a Texas corporation; HEARTHSTONE
MANAGEMENT, INC., a Texas corporation;
and LASHANDA SNELL, as the personal
representative for the Estate of Susanna West,

Defendants.

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OPINION AND ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

This dispute requires the Court to reconcile two seemingly irreconcilable lines of precedent under the Michigan No-Fault Act, MCL 500.3101, *et seq.* In 2008, Susanna West – a resident of an elder-care facility called Hearthstone Senior Services (“Hearthstone”) – boarded a Hearthstone bus with other residents to return from a shopping trip at a Meijer store. The other residents disembarked from the bus when it arrived at Hearthstone, but Ms. West remained on the bus and was locked in the vehicle in a Hearthstone parking lot, where she spent a frigid night that led to her death. Because Hearthstone had no general liability policy for such incidents, it incurred a sizable default judgment in a 2010 suit. In time, Ms. West’s estate found an insurance policy covering the bus on which she had been trapped, so the vehicle’s insurer – Employers Insurance Company of Wausau (“Wausau”) – filed this declaratory-judgment action seeking clarification of the insurance-coverage issue.

Plaintiff Wausau argues that the Court must grant summary disposition in its favor pursuant to MCR 2.116(C)(10) because there is no genuine issue of material fact as to the coverage available under its vehicle-insurance policy for Ms. West’s death. “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” West v General Motors Corp, 469 Mich 177, 183 (2003). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” Id.

The vehicle-insurance policy at issue here conforms to the requirements of the Michigan No-Fault Act in that it provides coverage for “‘bodily injury’ . . . caused by an ‘accident’ and resulting from the ownership, maintenance or use of a covered ‘auto.’” See Plaintiff’s Motion for Summary Disposition, Exhibit B (Business Auto Coverage Form, § II(A)– Liability Coverage); see also MCL 500.3135(1) (providing conditions for “tort liability for noneconomic loss caused by . . . ownership, maintenance, or use of a motor vehicle”). The Michigan No-Fault Act defines an “accident” as “a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle,” see MCL 500.3101(2)(f), and our Supreme Court has denied coverage under that language to a man who “was nonfatally asphyxiated while sleeping in a camper/trailer attached to his pickup truck.”¹ See McKenzie v Auto Club Ins Ass’n, 458 Mich 214, 215 (1998). Clearly, the language and logic

¹ That case involved a claim for personal protection insurance (“PIP”) benefits, see McKenzie v Auto Club Ins Ass’n, 458 Mich 214, 215 (1998), while the instant case concerns residual-liability coverage, see MCL 500.3131(1), but that distinction makes no difference in the analysis because the standards applicable to the two types of coverage seem coterminous, compare McKenzie, 458 Mich at 216-226 (analysis in PIP context) with Century Mutual Ins Co v League General Ins Co, 213 Mich App 114, 120-121 (1995) (analysis in residual-liability context), even though the statutory language defining responsibility for those two types of coverage differs slightly. See MCL 500.3105(1) (PIP benefits must be provided only for “accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle *as a motor vehicle*”).

of McKenzie suggest that coverage should be denied in the case of Ms. West, whose injury leading to death resulted from being trapped overnight in a parked bus, and thereby suffering the long-term effects of dehydration and hypothermia.² As our Supreme Court has explained: “[T]he Legislature intended coverage of injuries resulting from the use of motor vehicles when closely related to their transportational function and only when engaged in that function.” Id. at 220.

But our Supreme Court and our Court of Appeals have taken a different analytical approach in dealing with cases arising from injuries to bus passengers. First, our Supreme Court reasoned in Pacific Employers Ins Co v Michigan Mutual Ins Co, 452 Mich 218 (1996), that a vehicle-insurance policy afforded coverage “for injuries suffered by a child returning from her first day of kindergarten, who was disembarked by a school bus driver at the wrong stop, and who, trying to find her way to her destination, was injured crossing a street at an unfamiliar location.” Id. at 220. Overturning the ruling from our Court of Appeals “that ‘use’ should be defined narrowly ‘to encompass only those injuries arising from the carrying of persons aboard the bus[,]’” see id. at 223, our Supreme Court unanimously held that the child’s injuries arose “out of the ownership, maintenance or use” of the bus because, when the bus driver “failed to disembark the child at the correct location, she ‘misused’ the bus.” Id. at 226. Second, several years after our Supreme Court issued its McKenzie decision, our Court of Appeals found that a vehicle-insurance policy provided coverage “for injuries sustained by two students kidnapped while being discharged from the insured’s school bus.” See Indiana Ins Co v Auto-Owners Ins Co, 260 Mich App 662, 663 (2004). Concluding that the Pacific Employers

² Indeed, the Michigan No-Fault Act itself provides that “[a]ccidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle” except in a few narrowly defined circumstances. See MCL 500.3106(1); Frazier v Allstate Ins Co, 490 Mich 381, 384 (2011) (“in the case of a parked motor vehicle, a claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1)”).

decision “controls this case[,]” id. at 671, our Court of Appeals explained that “this case involves an insurance policy for the use of school buses, as opposed to a case involving a no-fault policy or the no-fault statute with respect to a motor vehicle, [which] is a critical distinction.”³ Id. at 676.

Our Court of Appeals has provided a sound method for harmonizing the seemingly divergent holdings of McKenzie and Pacific Employers. Specifically, if a standard no-fault policy is at issue, the Court must focus “on the use of the motor vehicle as a motor vehicle,” as required by McKenzie. See Indiana Ins, 260 Mich App at 676. But if a school-bus policy is at issue, the Court must “focus on the particular use of a school bus, i.e., to transport children to and from school while ensuring ‘that the child reaches the predetermined bus stop under the supervision of the school bus driver,’” as contemplated by Pacific Employers. See Indiana Ins, 260 Mich App at 677. Here, Ms. West rode on – and was eventually trapped in – a vehicle insured under a standard no-fault policy, rather than a school-bus policy. Accordingly, the no-fault standards prescribed in McKenzie control this case, so the Court must grant summary disposition to Plaintiff Wausau pursuant to MCR 2.116(C)(10) on its request for declaratory relief.⁴

IT IS SO ORDERED.

Dated: September 23, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

³ Similarly, in Pacific Employers, the vehicle-insurance policy contained a provision relating to “School Bus Use.” See Pacific Employers, 452 Mich at 222.

⁴ This appears to be a final order that resolves the last pending claim and closes the case, but in an abundance of caution, the Court shall not yet close the case. Instead, the Court shall schedule a status conference to determine whether there remains any work to be done in this case.