

STATE OF MICHIGAN  
COURT OF APPEALS

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TITAN INSURANCE COMPANY,  
Plaintiff-Appellant,

UNPUBLISHED  
September 11, 2008

v

NORTHLAND INSURANCE COMPANY,  
Defendant-Appellee.

No. 275866  
Genesee Circuit Court  
LC No. 06-084135-CK

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Before: Gleicher, P.J., and O’Connell and Kelly, JJ.

GLEICHER, J. (*concurring*).

I concur in the analysis and result reached by Judge Kelly’s lead opinion. I write separately to set forth an additional reason that reversal is required.

Judge Kelly’s opinion holds that because the Northland policy endorsement designates Eschenweck as the “lessor named in the Schedule,” Eschenweck qualifies as a “named insured.” The dissent asserts that the statutory phrase “named in the policy” constitutes “a legal term of art that specifically refers to a policy’s ‘named insured.’” According to the dissent, this Court’s decisions in *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264; 548 NW2d 698 (1996), and *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 253; 535 NW2d 207 (1995), compel the conclusion that “[a] policy that lists an injured party by name as anything other than a ‘named insured’ does not take equal priority with a policy that lists the injured person under the technical designation ‘named insured.’”

In my view, the result in this case is governed entirely by the unambiguous language of MCL 500.3114(1), which provides in relevant part that

a personal protection insurance policy . . . 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. [Emphasis supplied.]

The statute plainly refers to “the person named in the policy.” The dissent asserts, however, that pursuant to this Court’s opinions in *Cvengros* and *Harwood*, the language used by the Legislature, “the person named in the policy,” is synonymous with “the named insured,” an insurance policy “term of art.” Because the only “named insured” in the Northland policy is

Steel Transportation Services, the dissent reasons that Northland lacks any obligation to reimburse Titan for one-half of Eschenweck’s no-fault benefits under MCL 500.3114(1).

In my view, *Cvengros* and *Harwood* no longer constitute binding precedent on this issue, and this case instead should be decided simply by applying statutory construction principles. In *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000), the Michigan Supreme Court carefully elucidated the general rules governing the interpretation of statutory language. The Supreme Court initially observed that “[b]ecause the Legislature is presumed to understand the meaning of the language it enacts into law,” the analytical process begins with the words of the statute. *Id.* “Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence.” *Id.* Most importantly, the Supreme Court declared in *Robinson* that a reviewing court “may not assume that the Legislature inadvertently made use of one word or phrase instead of another.” *Id.*; see also *Ewin v Burnham*, 272 Mich App 253, 255; 728 NW2d 463 (2006), quoting *Robinson, supra* at 459. “Where the language of the statute is clear and unambiguous, the Court must follow it.” *Robinson, supra* at 459; see also *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004) (observing that “[i]n construing statutes we examine the language the legislature has used. That language is the best indicator of the Legislature’s intent”).

In MCL 500.3114(1), the Legislature selected the term “the person named in the policy.” It did not use the term “named insured.” Notably, the Legislature used the term “named insured” in other provisions of the no-fault act. For example, MCL 500.3208 provides as follows:

This chapter shall not be applicable with respect to termination of coverage at the end of any policy period or at any annual anniversary date of any policy which specifies no term, nor shall it be applicable with respect to any cancellation for failure of *the named insured* to discharge when due any of his obligations in connection with the payment of premiums for the policy, or any installment thereof, whether payable directly to the insurer or his agent indirectly under any premium finance plan. [Emphasis supplied.]

The term “named insured” also appears in MCL 500.3220:

Subject to the following provisions no insurer licensed to write automobile liability coverage, after a policy has been in effect 55 days or if the policy is a renewal, effective immediately, shall cancel a policy of automobile liability insurance except for any 1 or more of the following reasons:

(a) That during the 55 days following the date of original issue thereof the risk is unacceptable to the insurer.

(b) That *the named insured* or any other operator, either resident of the same household or who customarily operates an automobile insured under the policy has had his operator’s license suspended during the policy period and the revocation or suspension has become final. [Emphasis supplied.]

The Legislature used the term “the person named in the policy” in several no-fault sections besides MCL 500.3114. See MCL 500.3103(2), MCL 500.3109(3), and MCL 500.3109a.

The dissent is correct that Eschenweck is not a “named insured” in the Northland policy. But no reasonable debate can dispute that Eschenweck is a “person named in the policy” issued by Northland. In MCL 500.3114(1), the Legislature employed the latter term, and not the former, and *Robinson* instructs that the Legislature made this choice deliberately. Given the Legislature’s obvious familiarity with both phrases, I cannot join in the dissent’s assumption that the Legislature inadvertently intended MCL 500.3114(1) to apply only to Steel Transportation Services, the “named insured” in Northland’s policy.

Because Eschenweck is unquestionably a person “named in the [Northland] policy,” I conclude that he is covered thereunder pursuant to MCL 500.3114(1), and that the circuit court should have apportioned expenses between Titan and Northland.

/s/ Elizabeth L. Gleicher