S T A T E O F M I C H I G A N

SUPREME COURT

WILLIE GRIFFIN,

Plaintiff-Appellant,

v No. 162419

TRUMBULL INSURANCE COMPANY and MICHIGAN ASSIGNED CLAIMS PLAN,

Defendants-Appellees,

and

ALLSTATE INSURANCE COMPANY, ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY, and JOHN DOE INSURANCE COMPANY,

Defendants.

ZAHRA, J. (*dissenting*).

I would affirm the decision of the Court of Appeals. A lower-priority insurer cannot be held liable for personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., when the highest-priority insurer is identifiable and not given timely notice under MCL 500.3145(1). This conclusion is required by the unambiguous text of the no-fault act. The majority, however, eschews the unambiguous text of the act in favor of a result that is consistent with the act's general purpose. But the general purpose of an act cannot defeat the clear and unambiguous language within the act that places limitations on the scope of that act. To do so begs the question and assumes the answer. Here, the

Legislature made clear that a motorcycle operator who is injured in an accident that involves a motor vehicle "*shall* claim personal protection insurance benefits from . . . [t]he insurer of the owner or registrant of the motor vehicle involved in the accident."[1] Because plaintiff failed to timely claim PIP benefits from the insurer of the owner or registrant of the truck involved in his accident, I dissent.

MCL 500.3114(5) states that "a person who suffers accidental bodily injury arising from a motor vehicle accident that shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle *shall* claim personal protection insurance benefits from insurers *in the following order of priority*[.]"[2] The first in the list of priority is "[t]he insurer of the owner or registrant of the motor vehicle involved in the accident."[3] The Legislature's use of the word "shall" indicates that the priority list is mandatory.[4] And it is undisputed here that Harleysville Insurance Company is the highest-priority insurer under MCL 500.3114(5). Trumbull Insurance Company is no more than second in priority. Therefore, plaintiff was required to follow the order of priority and claim benefits from Harleysville. Plaintiff failed to do so within the one-year statutory period.[5] Plaintiff is therefore barred from collecting PIP benefits from Harleysville. Nothing in the no-fault

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[1] MCL 500.3114(5)(a) (emphasis added).

[2] Emphasis added.

[3] *Id*.

[4] See, e.g., *Fradco, Inc v Dep't of Treasury*, 495 Mich 104, 114; 845 NW2d 81 (2014) (explaining that the Legislature's use of the word "shall" in the relevant statutes "indicates a mandatory and imperative directive").

[5] See MCL 500.3145(1).

act provides a basis to conclude that plaintiff is nevertheless entitled to recover based on notice it gave to Trumbull, the wrong insurer. The no-fault act does not provide exceptions for difficulties in discovering necessary facts or evidence that would either toll the statute of limitations or allow the plaintiff to sue an otherwise incorrect defendant.

Similarly, nothing in the broader statutory context suggests that the Legislature intended to place lower-priority insurers on the hook when a plaintiff fails to identify the highest-priority insurer within the limitations period. One might think that if the Legislature intended for a lower-priority insurer to pay even when a higher-priority insurer can be identified, the Legislature would have provided a recoupment mechanism whereby the lower-priority insurer could seek reimbursement from the higher-priority insurer. The no-fault act contains various recoupment devices for insurers, but none covers these circumstances.[6] The need for a recoupment mechanism would be readily apparent if lower-priority insurers were required to pay in these circumstances. For example, an insurer might sue a lower-priority insurer on the very last day of the limitations period, leaving that insurer no time in which to identify a higher-priority insurer before the limitations period expired. This provides support for the conclusion that the lower-priority insurer is not obligated to pay when there is a higher-priority insurer.

I have no dispute with the majority about the general purpose of the no-fault act, which is "designed to provide sure and speedy recovery of certain economic losses

[6] See *Bronner v Detroit*, 507 Mich 158, 173-175; 968 NW2d 310 (2021) (discussing the reimbursement mechanisms in the statute).

resulting from motor vehicle accidents."[7] I also agree that "the *preferred* method of resolution [of priority disputes] is for one of the insurers to pay the claim and sue the other in an action of equitable subrogation."[8] But it cannot be that the general purpose of an act trumps express language within the act. Limitations on recovery placed in the no-fault act are more a part of the no-fault act's purpose than the broad, general purpose of the act itself. I am aware of no legislation, state or federal, that pursues a general purpose at all costs. There are always legislative limitations that set boundaries on recovery—boundaries that must be honored by the courts.[9]

Ultimately, the issue in this case is not whether the purposes of the no-fault act would be furthered by making Trumbull pay. Rather, at issue is whether an insurer must pay PIP benefits when it is not the highest-priority insurer. Was it plaintiff's obligation to determine whether the truck involved in his accident was insured, or was plaintiff permitted to make his claim for PIP benefits with Trumbull, his motor vehicle insurer, and thus place the onus on Trumbull to pay the claim even if a higher-priority insurer could be identified? As discussed earlier, I conclude that the obligation fell on plaintiff, not Trumbull. The no-fault act sets forth a clear order of priority. The act further requires the "person who suffers accidental bodily injury [to] . . . claim personal protection insurance benefits from insurers

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[7] *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, 507 Mich 498, 517; 968 NW2d 482 (2021) (quotation marks and citation omitted).

[8] *Id*. (emphasis added; quotation marks, citation, and brackets omitted).

[9] As more fully explained in this dissent, the general purpose of ensuring prompt payment of no-fault benefits would have been satisfied had plaintiff's counsel more diligently pursued an investigation into this claim.

in the [statutorily defined] order of priority[.]"[10] Nothing in the statutory language suggests that a claim may be asserted against a lower-priority insurer, thus forcing that insurer to pay benefits even if a higher-priority insurer can be identified.

The Court of Appeals opinion in *Frierson v West American Ins Co* demonstrates how the statute operates.[11] There, the Court held that when an insurer cannot be identified, the injured party must look to their own insurer for PIP benefits. *Frierson* did not hold that an injured party can jump down the order of priority if the highest-priority insurer *could* have been identified but was not. As the majority explains, *Frierson* involved a hit-and-run in which neither the police nor the parties were able to identify the driver or offending vehicle. Because it was impossible to identify a higher-priority insurer, the injured party's own insurer was the highest-priority insurer under the no-fault act. But the *Frierson* panel explained that the offending vehicle's insurer would be liable under MCL 500.3114(5) "if identified."[12]

In the present case, the highest-priority insurer was identifiable and, in fact, has been identified. There is no dispute that Harleysville is a higher-priority insurer than Trumbull. The Court of Appeals correctly explained that *Frierson* calls for a binary analysis: a higher-priority insurer is either identifiable or not. Here, because the higher-priority insurer was identifiable, the statutory order of priority must be followed.[13]

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[10] MCL 500.3114(5).

[11] *Frierson v West American Ins Co*, 261 Mich App 732, 738; 683 NW2d 695 (2004).

[12] *Id*.

[13] The majority relies, in part, on *Parks v Detroit Auto Inter-Ins Exch*, 426 Mich 191, 202-203; 393 NW2d 833 (1986). There, we addressed MCL 500.3114(1), which states, in pertinent part, "Except as provided in subsections (2), (3), and (5), . . . [a] personal injury

There is simply no textual basis for the "reasonable diligence" standard pressed by the majority and Justice CLEMENT. The majority emphasizes the unique facts and circumstances of this case, but the facts of this case are not all that unique and, in any event, do not change the meaning of a statute.[14] As discussed, MCL 500.3114(5) sets forth a mandatory order of priority. And there is not a statutory provision that creates an exception for claimants that failed to identify the proper insurer after giving it a good try. The majority and Justice CLEMENT import an exception into the statute based on policy and fairness concerns and, in doing so, rewrite the Legislature's priority scheme. As noted, under a proper reading of the statute, whether a higher-priority insurer is identifiable does not depend on whether a plaintiff exercised reasonable diligence to identify that insurer. But under the majority's opinion, a claimant may now provide notice to and recover from any of the listed insurers, regardless of how low on the priority list they may be; if he or she is deemed to have reasonably attempted to identify the higher-priority insurer, a lower-priority insurer will be forced to pay the claim and, in turn, bring its own claim for recovery against the highest-priority insurer.

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insurance policy described in section 3103(2) 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 motorcycle accident." In concluding that Subsection (3) did not apply and thus Subsection (1) governed, we stated that "the general rule is that one looks to a person's own insurer for no-fault benefits unless one of the statutory exceptions, subsections 2, 3, and 5 applies." *Parks*, 426 Mich at 202-203. Here, by contrast, the terms of Subsection (5) clearly apply—MCL 500.3114(5) provides the rule for the circumstance at issue, i.e., a motorcycle accident.

[14] See *Clark v Martinez*, 543 US 371, 386; 125 S Ct 716; 160 L Ed 2d 734 (2005).

Even if there were a reasonable-diligence requirement, I would conclude, as does Justice CLEMENT, that plaintiff did not exercise reasonable diligence in this case. Plaintiff knew that a truck was involved in the accident giving rise to his injuries. Under the clear and unambiguous language of the no-fault act, plaintiff was to first pursue his PIP benefits from the insurer of the truck's owner or registrant. Plaintiff enlisted the aid of counsel to assert his claim. As noted in the majority's opinion, plaintiff's counsel sent a letter to the truck driver stating that plaintiff intended to take legal action and requesting that the driver forward the letter to his insurer. Apparently, the truck driver did not respond to this correspondence, and plaintiff's counsel did not take legal action, as threatened in the correspondence to the driver, or take any further action to determine the higher-priority insurer. Had plaintiff's counsel timely done so, plaintiff would have discovered the existence of Harleysville before the expiration of the limitations period. It does not appear, for example, that plaintiff or his counsel ever thought to investigate whether the driver had been operating his employer's vehicle at the time of the accident. The driver testified that the vehicle was a stake-bed truck with a tandem axle; there was also evidence that it was carrying a steamroller. Plaintiff indicated that he recalled seeing logos on the truck. It should have been apparent, therefore, that the truck could have been owned by the driver's employer. But plaintiff did not search for that employer, and it was not reasonable for plaintiff and his counsel to rely on Trumbull's own investigation.

It is not entirely clear what plaintiff or his attorney knew about Trumbull's investigation—they received a letter simply informing them that the claim was under investigation—yet they waited nearly five months before asking for an update from Trumbull. In May 2017, after the lawsuit had been filed, Trumbull responded that "[w]e

are unable to consider benefits at this time due to a lack of information regarding this matter." Thus, it does not appear that plaintiff was receiving updates or had any reason to believe that Trumbull had successfully found the higher-priority insurer—nor does it appear that plaintiff or his counsel sought any further updates. For these reasons, I cannot agree with the majority that plaintiff exercised reasonable diligence before commencing this lawsuit.

In sum, a goal of the no-fault act is indeed prompt payment, meaning that the act tends to prefer that insurers pay first and seek reimbursement later. But a general goal of the no-fault act cannot defeat clear statutory language. The majority's ruling improperly elevates this general principle from a mere policy objective to the prime directive of the no-fault act. For these reasons, I would affirm the decision of the Court of Appeals.

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David F. Viviano