No-Fault Insurers Must Strictly Comply with Statute Requiring Warning Language for Named Driver Exclusion

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In a published opinion issued March 16, 2010, the Michigan Court of Appeals held that no-fault insurers must strictly comply with the statute requiring certain warning language in named driver exclusions. *Progressive Mich Ins Co v Smith*, Docket No. 287505 (Mar. 16, 2010).

The driver of a truck that struck Appellants' vehicle was named in a Progressive no-fault policy as an excluded driver. Progressive denied that it was obligated to indemnify the driver, relying on the policy's named driver exclusion. Appellants argued for coverage, urging that Progressive did not comply with MCL 500.3009(2), which states that a named driver exclusion:

> shall not be valid unless the following notice is on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance: Warning-when a named excluded person operates a vehicle all liability coverage is void-no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

Although the declarations page included this exact language, the policy itself and the certificate of insurance used the word "responsible" instead of "liable" as the last word of the warning. The trial court held in favor of Progressive, but the Michigan Court of Appeals reversed. The court held that the statute mandated that the required language must appear on ***both*** the declarations page and the certificate of insurance. "Substantial compliance" with the statute was insufficient, and accordingly, Progressive's named driver exclusion was void.

In light of this new case law, no-fault insurers should understand that any variation from the statutory language – even if it does not change the meaning of the warning – may result in the named driver exclusion being declared invalid.

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