

KIM M. WALKER, Executor of the  
Estate of EMMA J. WALKER,  
Deceased, on behalf of the  
Estate and on his own behalf,  
Plaintiff

vs.

NATIONWIDE MUTUAL  
INSURANCE COMPANY,  
Defendant

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
:  
: CIVIL ACTION – DECLARATORY  
: JUDGMENT AND IN BAD FAITH  
:  
: NO. 01-00,130  
:  
:  
: SUMMARY JUDGMENT MOTION FOR  
: DECLARATORY JUDGMENT

**Date: June 28, 2002**

**OPINION AND ORDER**

**Background**

This is a Civil Action for a Declaratory Judgment. Before the Court are Cross Motions for summary judgment. The case was initiated by a declaratory judgment action filed by the Plaintiff on January 26, 2001, seeking to recover First Party Benefits from Defendant Nationwide Mutual Insurance Company on behalf of the deceased, Emma J. Walker, an insured under Nationwide Policy 58 37 C019688, who was struck and killed as a pedestrian by an automobile on October 31, 2000. An Answer, New Matter and Counterclaim to Plaintiff’s Complaint were filed by defendant Nationwide Mutual Insurance Company on May 31, 2001, maintaining that Emma J. Walker was not covered under the policy for First Party Benefits, because she was not a “named insured” as defined by their policy. On September 7, 2001, Plaintiff filed an Amended Complaint. On October 5, 2001 Defendant filed an Answer, New Matter to Plaintiff’s First Amended Complaint. On October 12, 2001 Plaintiff replied to Defendants New Matter.

Depositions of Kim Walker, Plaintiff and David Alan Gardner, Agent for Nationwide Insurance Co., were taken On October 22, 2001. A Motion For Summary Judgment was filed by the Plaintiff on October 29, 2001 and a cross Motion for Summary Judgment was filed by the Defendant on November 5, 2001.

The Motion for Summary Judgment of Plaintiff will be granted, for the following reasons:

1. The inclusive nature of the Motor Vehicle Financial Responsibility Law secures the First Party benefits of those that are clearly “insured” on a policy, regardless of whether they are the “named insured” in the policy.

2. Where it is clear from the evidence that an “insured” person, even though not technically the “named insured” of the policy, but for the juxtaposition of terminology by the insurer would be eligible for all the benefits held out by the Insurance Company to the “named insured”, that person is likewise entitled to the full benefits as provided by the policy.

Therefore, in this case, Emma J. Walker, deceased is entitled to First Party benefits under Nationwide Insurance Policy #58 37 C019688, payable to her surviving son and Executor of the Estate of Emma J. Walker.

**Facts**

The undisputed facts are these:

1. On October 31, 2000 Emma J. Walker, was crossing Park Ave in the City Of Williamsport, Lycoming County, Pennsylvania as a pedestrian when she was struck by

a motor vehicle driven by John J. Stetts and died of the result of her injuries sustained in this accident.

2. On the day of the fatal accident, Emma J. Walker had driven the 1993 Ford Escort auto to the area of Rose St. & Park Ave., Williamsport for purposes of participating in bowling at the ABC Bowling lanes. After leaving the auto, Emma was fatally struck by the Stett's auto when crossing Park Avenue.

3. Mr. Kim M. Walker, as the administrator of the estate of Emma Walker sought "first party" benefits, including accidental death benefits, funeral expenses, and medical coverage pursuant to Nationwide policy # 58 37 C019688 originally, issued to he and his wife, Carol Walker, with effective dates of July 25, 2000 through January 25, 2001.

4. Kim M. Walker was added to the policy effective 03/09/87 after marriage to Carol Walker, in 1986.

5. Emma J. Walker was co-owner of a 1993 Ford Escort and identified "by name" on the Vehicle Title, along with her son Kim M. Walker. This vehicle was undisputedly insured under the "Walker Policy, from which Nationwide recorded the VIN number of the car on various documents related to the policy at issue.

6. Emma J. Walker was listed "by name" on a 6/21/96 Nationwide Insurance Company Vehicle Insurance Questionnaire as a principle driver of the 93 Ford Escort, as per Plaintiff's Exhibit 14-A, from October 11, 2001 Deposition of David Alan Gardner, Agent and on behalf of Nationwide Insurance Co.

7. Emma J. Walker was listed on Nationwide Insurance Companies Auto Change Binder showing her "by name" added to the policy effective 08/01/88, as per Plaintiff's

Exhibit 16, from October 11, 2001 Deposition of David Alan Gardner, Agent and on behalf of Nationwide Insurance Co.

8. Emma J. Walker was “by name” identified on a 1988 premium receipt in notes of David Alan Gardner, agent for Nationwide Insurance, adding Emma Walker as a driver on Kim and Carol’s policy, as per Plaintiff’s Exhibit 8 from the October 11<sup>th</sup>, 2001 deposition of David Alan Gardner, Agent on behalf of Nationwide Insurance.

9. On this same receipt was a note by David Alan Gardner, Nationwide agent identifying “by name” Emma J. Walker as being the driver of a particular vehicle covered under the “Walker Policy”, as per Plaintiff Exhibit 8, from the October 11, 2001 deposition of David Alan Gardner, Agent for Nationwide Insurance.

10. Emma J. Walker was identified “by name” on a Nationwide Policy Declaration sheet, as per Plaintiff Exhibit 16, from the October 11, 2001 deposition of David Alan Gardner, Agent for Nationwide Insurance

11. Emma J. Walker was subsequently identified by a series of codes and demographic information including, sex, marital status and birth date on various Nationwide Insurance computer screens, as per Plaintiff Exhibit 17, from the October 11, 2001 deposition David Alan Gardner, Agent for Nationwide Insurance.

12. Nationwide Insurance Company denied Kim M. Walker’s subsequent claim for first party benefits on behalf of Emma J. Walker’s estate, claiming she was not covered under the policy as she was not a “named insured”, a resident relative, or occupying a vehicle insured under its policy, at the time of her death.

**Propositions Agreed To:**

In addition to the above stated undisputed facts the following propositions are relevant and undisputed in this case.

1. Under a literal reading of the definitions as set forth in the subject Nationwide Insurance Policy Emma J. Walker is ineligible for First Party benefits, as she is not the “named insured”; not a relative of the named insured currently residing with the named insured; and was not, at the time of the accident, an occupant of a vehicle covered under the “Walker” policy.

2. Under the Nationwide policy, if Emma J. Walker had been listed as a “named insured” then Emma’s estate would clearly be entitled to the First Party benefits currently sought under this action.

3. Under the Motor Vehicle Financial Responsibility Law if Emma J. Walker fits into the statutory definition of “an individual identified by name as an insured”, Emma J. Walker is entitled to the First Party benefits under the Nationwide policy, as “under Pennsylvania Law, as a general rule, stipulations in a contract of insurance in conflict with, or repugnant to statutory provisions, which are applicable to, and consequently form a part of the contract, must yield to the statute, and are invalid, since contracts cannot change existing statutory laws,” *Nationwide Mut. Ins. Co. v. Cosenza*, C.A.3 (Pa) 2001, 258 F.3d 197.

As set forth herein in disposing of the central questions in this case this Court holds:

1. The Nationwide Policy limits the broader range of coverage mandated by the Motor Vehicle Financial Responsibility Law running afoul of the Statutory intent, and its exclusionary language, is void as against public policy.

2. This Court also holds that Emma J. Walker is clearly identified in sufficient policy related documents which are incorporated into the actual Nationwide policy that despite not being a “named insured” under the MVFRL, she was an “individual identified by name as an insured” in the Nationwide policy.

### **DISCUSSION**

In considering the merits of the Cross Motions for Summary Judgment before the Court two relevant documents were analyzed. First, the Nationwide Insurance Policy entered into between the Plaintiff’s Kim and Carol Walker and Nationwide Insurance company. Second, the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL) 75 Pa.C.S.A. sections of each document relevant to the analysis are as follows:

#### **NATIONWIDE POLICY (Emphasis in Original)**

The Nationwide Insurance Policy entered into by the Plaintiff and Nationwide provides the following language with respect to first party benefits. (Emphasis in the original).

We will pay First Party Benefits for **bodily injury** of an **insured** as a result of an accident that arises out of the maintenance or use of a motor vehicle as a motor vehicle. We will pay these benefits regardless of who is at fault in the accident.

An “insured” is generally defined in the definitions section of the Nationwide policy as, “one who is described as entitled to protection under each coverage.”

The policy, in the First Party Benefits section, further refines the definition of insured to mean:

1. “The **policyholder and relatives** are covered while occupying or injured by any **motor vehicle**.”
2. Persons other than the **policyholder and relatives**:

- (a) While **occupying your auto**.
- (b) As non-occupant of a **motor vehicle** if injured as the result of an accident in Pennsylvania involving **your auto**.

Other relevant Nationwide Policy definitions include:

- 1. **POLICYHOLDER**-means the first person named in the declarations. The policyholder is the named insured under this policy and does not include the policyholder's spouse.
- 2. **“YOU and YOUR**- mean or refer to the policy holder as defined and include the policyholder's spouse if living in the same household.
- 3. **RELATIVE**-means one who regularly resides in **your** household, related to **you** by blood, marriage or adoptions. A relative may live temporarily outside your household.

**MVFRL**

The Motor Vehicle Financial Responsibility Law defines an “Insured” as any of the following:

- 1. An **individual identified by name as an insured** in a policy of motor vehicle liability insurance. (Emphasis added)
- 2. If residing in the household of the name insured:
  - a. a spouse or other relative of the named insured; or
  - b. a minor in the custody of either the named insured, or relative of the named insured.

The Plaintiff has conceded as Nationwide Insurance Company contends that Emma Walker does not come under their policy's definition of “named insured” and therefore

does not qualify for First Party benefits, under their policy. But the analysis must go further, as we must look next to the specific language and the legislative intent of the Motor Vehicle Financial Responsibility Statute with which all Pennsylvania Motor vehicle Insurance policies must be in compliance, to ascertain if Emma J. Walker falls within the more inclusive scope of this Act.

### **LEGISLATIVE INTENT OF THE MVFRL**

The purpose of the MVFRL is “ to provide maximum feasible restoration of all individuals injured and compensation of economic losses of survivors of all individuals killed in motor vehicle accidents on Commonwealth highways. *Swezey v. Home Indem Co.*, 1983, 571 F. Supp.224. The MVFRL carries out this purpose by establishing a minimum threshold of coverage, which the Insurance Companies must make available to their customers. An insurer who fails to provide its insured with personal-injury protection benefits may be liable under the MVFRL 75 Pa.C.S.A. §1701 as well as under the Unfair Trade Practices and consumer Protection Law 73 Pa. C.S. 201-1 et seq. *Leitzel v. Nationwide Ins. Co.*, 2 Pa. D & C.4<sup>th</sup> 101 (1988). Nothing in the record indicates in any way that Nationwide in this instance has failed in its responsibility to provide the minimum coverage required by the MVFRL, and in that respect, as its policy documents note, Nationwide is in compliance with the “financial responsibility” requirements of the MVFRL.

The Nationwide policy however allows that only the “named insured” of the policy are eligible for First Party benefits while the MVFRL reads that an “**individual identified by name as an insured**” is covered. Nationwide’s more restrictive definition of



“an insured” therefore runs contrary to the more inclusive nature of the MVFR, and in this regard Nationwide is not in compliance with the statute.

There is no question the MVFRL is to be interpreted inclusively, particularly as to first party benefits. In *Evans v. Erie Insurance Co.*, 36 Pa. D.& C. 4<sup>th</sup>. 292 (1998), where Erie Insurance Company denied first party benefits to an uninsured victim of an automobile-pedestrian accident, who submitted the claim under Erie’s coverage of the automobile driver, the Court stated,

The Motor Vehicle Financial Responsibility Law creates a relationship between automobile accident victims who are not insureds and the automobile companies **that is identical to the relationship between and automobile accident victim who comes within the policy’s definition of an insured and the victim’s insurance company.** (Emphasis added)

*Ibid.*, at 292.

The inclusive nature of this MVFRL definition if construed to apply to “automobile accident victims who are not insured” is more so inclusive of persons such as Emma L. Walker who was clearly acknowledged by Nationwide as “insured” under the policy, albeit not as a “the named” insured. Such a juxtaposition of terminology to avoid payments of rightful benefits is an effort by Nationwide to skirt the intention of the MVFRL to provide broad coverage for those who have lived up to their “financial responsibility” as called for in the statute by carrying the proper insurance, and is therefore is in violation of the statute.

Nationwide Insurance Company additionally violates the statutory intent of the MVFRL by yet further narrowing their definition of insured in their First Party Benefits declaration page, to mean only “the policyholder and relatives.” Denying those benefits in this manner to Emma J. Walker who is clearly “an insured” under the contract is inconsistent with

the statute as well as contrary to a common sense understanding and expectation that the insured would be excluded from coverage they “in good faith” bargained for simply by the verbiage utilized by the insurance company in an effort to limit their liability.

Section 1713(a)(2) of the MVFRL, further illustrates that the scope of the statute is broad enough to anticipate and to include First Party benefits coverage for those persons like Emma J. Walker who are undisputedly “insured” under a policy but are not the “named insured” of that policy, where it states:

...A person who suffers injury arising out of the maintenance or use of a motor vehicle shall recover first party benefits against applicable insurance coverage in the following order of priority”  
For the named insured, the policy on which he is the named insured

1. **For an insured, the policy covering the insured.**
2. For the occupants of an insured motor , the policy on that motor vehicle.
3. For a person who is not an occupant of a motor vehicle, the policy on any motor vehicle involved in the accident.

In *Evans*, the court emphasized,

**The Motor Vehicle Responsibility Law does not treat a section 1713(a)(4) automobile accident victim i.e. “ a person not an occupant of a motor vehicle.” in any different fashion from an automobile accident victim who is either a named insured or an insured with respect to eligibility to recover First. Party benefits.** A victim under Section 1713(a)(4) cannot look to tort law to recover payment of their medical expenses: this victim can only look to the insurance company that is mandated to provide coverage. **Plaintiff is as dependant upon the good faith of the insurance company mandated to provide insurance coverage under section 1713(a) as is a named insured or an insured under a motor vehicle policy”.**

*Ibid.*, at 294

Likewise, as a undisputed “insured” in the Nationwide Policy using the MVFRL definition of “an individual identified by name as an insured in a policy of a motor vehicle” and as “an insured” specifically entitled to First Party benefits under MVFRL Section 1713(a)(2), Emma J. Walker must not be treated any differently than the Plaintiff in Evans. Emma J. Walker depended upon the good faith of the Nationwide Insurance Company to provide First Party benefits under Section 1713(a) and therefore can only rightfully look to the insurance company for recovery payment of medical expenses.

There is absolutely no question that Emma J. Walker was the co-owner and primary driver of the 1993 Ford Escort. She was properly insured as such and also insured as the principal driver of the car. The car, as known and insured by Nationwide, was to be garaged at her residence. Premiums were charged and paid accordingly. Emma J. walker received First Party benefits as a result, for which Nationwide acknowledges she is entitled to be insured in all situations where those benefits are payable, except if she is a pedestrian. The MVFRL does not allow such an exclusion.

Such a common sense and/or liberal construing of the Motor Vehicle Financial Responsibility Law upon which this portion of this decision rest, is well founded in Pennsylvania case law. For example, *Allwein v. Donegal Mut. Ins. Co.*, 671 A.2d 744, 448 Pa. Super. 364, (1996), (policy of liberally construing the MVFRL is based upon public policy of indemnifying victims of accidents for harm they suffer on Pennsylvania highways); *Danko v. Erie Insurance Exchange*, 630 A.2d 1219, 428 Pa. Super. 223 (1993) and *Sturkie v. Erie Insurance Group*, 595 A.2d 152, 407 Pa. Super 117 (the MVFRL should be construed liberally to afford the greatest possible coverage to injured claimants...); and *Lambert v. McClure*, 595

A.2d 629, 407 Pa. Super. 257, (1991) (MVFRL must be construed liberally to effect its objectives and promote justice)

**NAMED INSURED ON NATIONWIDE POLICY**

In the alternative to inclusion of Emma L. Walker as eligible for First. party benefits by virtue of the Legislative intent of the MVFRL, this Court holds that Emma Walker was clearly identified in a sufficient variety of related policy documents that clearly show her for all intensive purposes to be a “named insured” on the Nationwide policy document. In *Dauphin Deposit Trust Co. v. World Mutual Health and Accident Insurance Company of Pennsylvania*, (1965), the Court held that: “**an application for insurance is an integral part of a policy**, and questions and answers contained therein are material risks which both insurer and insured assume.” See also, *Orr v. Union Fidelity Life Insurance Co.*, 202 Pa. Super. 553, 198 A.2d 431 (1964), *New York Life Ins. Co. v. W. Bodek Corp.*, 320 Pa. 347, 350 182 A. 384 (1936), *New York Life Insurance Co. v. Brandwene*, 316 Pa. 218, 223, 172 A. 669 (1934).

Emma J. Walker was clearly identified “by name”, on a Nationwide policy Vehicle Insurance Questionnaire, Plaintiff Exhibit 14-A; on a Nationwide Auto Change Binder, Plaintiff Exhibit 16; on a Nationwide Policy Declaration page, Plaintiff’s Exhibit 18; on a 1988 Nationwide premium receipt from David Alan Gardner, agent for Nationwide Insurance, Plaintiff’s Exhibit 8; and on the Vehicle Title of the 1993 Ford Escort co-owned with her son Kim, Plaintiff Exhibit 15.

Clearly, Plaintiff Exhibits 14-A and 16 fall sufficiently within the reach of the Dauphin Trust holding, are therefore to be included as a part of the Nationwide policy, and thus

operate to “name” Emma J. Walker in the insurance policy both as owner and driver of the car insured by Nationwide. Plaintiff Exhibits 18, the Auto Declaration page and Exhibit 8—the premium receipt with a note from David Gardner, Nationwide agent, clearly identifying Emma J. Walker “by name” as an insured driver showing clearly that Nationwide specifically knew of and effectively acknowledged Emma J. Walker as a “named insured” under the policy. No evidence was offered by the Defendant that the policyholder was ever informed that Emma J. Walker classified only as an “insured” driver would not be eligible for the full benefits for which they had contracted for and for which premiums were paid.

It is abundantly clear that Nationwide Insurance Companies has adopted a procedure of referring to Emma J. Walker on the policy only through a series of codes and thereby artfully identifying her without technically “naming” her. This runs afoul of the statutory intent of the MVFRL. If Nationwide had instead used Emma’s driver’s license number or her social security number there would be no doubt she is being specifically identified in the policy, although not by name. Use of the codes by Nationwide effectively names Emma J. Walker in the policy in satisfaction of the statutory definition. This satisfies the obvious dual purpose of the Statute, which directs that the person insured under the policy is to receive mandated benefits and also limits the insurance provider to those persons properly identified to the insurer.

### **CONCLUSION**

The broad inclusive nature of the MVFRL statute as detailed above and a common-sense interpretation of the facts provided clearly show that Emma J. Walker is entitled to the first party benefits, as she is, in effect “named” in the Nationwide policy. This

inclusionary concept is consistent with long-held common business practice in many fields where documents, which lead to the establishment of a contractual relationship between parties, are incorporated into and become a part of that final contractual agreement.

**ORDER**

Plaintiff's Motion for Summary Judgment and a declaratory judgment that at the time of her death as a result of a motor vehicle accident in October 31, 2000, Plaintiff decedent Emma J. Walker , had and was entitled to first party benefits coverage under a policy of motor vehicle insurance with Defendant, as set forth in the declaration page of said policy, is granted. Plaintiffs are entitled to recover first party benefits under the policy to the extent of their loss and up to the maximum of:

- A. Medical benefits up to \$10,000.00
- B. Income loss benefits up to \$25,000.00 (not here applicable)
- C. Accidental death benefit - \$10,000.00
- D. Funeral Benefit of \$5,000.00

The Motion for Summary Judgment of the Defendant is denied.

BY THE COURT:

William S. Kieser, Judge

cc: Gary T. Harris, Esquire  
Eric Brown, Esquire  
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