

Order

Michigan Supreme Court
Lansing, Michigan

June 4, 2010

Marilyn Kelly,
Chief Justice

140017

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

GAYLORD GENAW, JR., Personal
Representative of the Estate of Gaylord
Genaw, Sr.,

Plaintiff-Appellee,

v

SC: 140017
COA: 284214
St Clair PC: 07-000069-CZ

CINDY GENAW,
Defendant,

and

UNUM LIFE INSURANCE COMPANY,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the October 6, 2009 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals for the reasons stated in the Court of Appeals dissenting opinion, and REMAND this case to the St. Clair Probate Court for entry of an order granting defendant Unum Life Insurance Company's motion for summary disposition. The defendant insurer was discharged from all liability under MCL 552.101(2) when it paid the policy benefits to the named beneficiary prior to receiving any notice of a competing or adverse claim to those benefits.

KELLY, C.J. (*dissenting*).

I would grant leave to appeal. At issue in this case is the interpretation of MCL 552.101(2), a statute that addresses entitlement to life insurance proceeds after a divorce. The statute declares that, absent an express designation to the contrary, once a divorce is final all policy benefits are payable to the insured. This addresses the problems posed when an ex-spouse is inadvertently left as the named beneficiary after a divorce. An additional clause protects insurance carriers. It provides that a carrier is discharged from

liability for distribution of the insurance proceeds if it pays them to the named beneficiary, absent notice of a competing claim.¹

The issue in this case is whether notice was provided to the insurance company. Gaylord Genaw, Sr. was killed in a traffic accident just three days after he was divorced from his wife. The judgment expressly indicated that his ex-wife was not entitled to the proceeds of his life insurance policy. However, his ex-wife's designation as beneficiary on the policy was never changed. She took advantage of this after the accident and made a claim for the proceeds. Defendant paid them to her, even though she disclosed the divorce on the claim form and the death certificate she submitted to defendant also indicated that Gaylord was divorced. When Gaylord's son discovered that she had improperly collected the policy proceeds, he brought this action against her and against the insurance company.

The trial court ordered the ex-wife to turn over to plaintiff what remained of the proceeds. The court then held defendant liable for the remainder. The Court of Appeals affirmed this action in a published split opinion.² It found that the ex-wife qualified as "any other person having interest in the policy" under MCL 552.101(2). Because she had given defendant written notice of the divorce, the court found that defendant had received notice according to the statute and was therefore responsible for wrongfully disbursing

¹ MCL 552.101(2) states, in its entirety:

Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. *However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.* [Emphasis added.]

² *In re Genaw Estate*, 285 Mich App 660 (2009).

the funds.³ The dissenting judge would have held that a named beneficiary cannot qualify as an “other person having interest in the policy.”⁴

The Supreme Court should resolve the correct interpretation of MCL 552.101(2). The majority has hastily accepted the dissenting opinion as correct without the benefit of full briefing or oral argument. I find this troublesome because, under the language of the statute, petitioner’s ex-wife, a named beneficiary of the policy, appears to be a “person having interest in the policy.” Nowhere does the statute contain a requirement that notice be given by someone other than the named beneficiary or that the insurer be advised of a competing claim to the insurance benefits.

Accordingly, I would grant leave to appeal to resolve the differing interpretations of the statute.

³ Under the factual circumstances of this case, it is undisputed that Unum received a claim from Genaw that specifically acknowledged both her status as the ex-wife of the decedent and the existence of a divorce. Consequently, this information, submitted in conjunction with her claim, was sufficient to meet the notice requirement imposed by the existing statutory language, and the insurance company was not absolved of its liability for payment of the proceeds to the designated beneficiary. [*Id.* at 669.]

⁴ [T]he plain language of the statute absolves an insurer of liability for paying its proceeds in accordance with the terms of the policy unless before the payment it receives written notice of a claim and of the divorce *from one of the persons identified in the statute*. These specified persons—(1) the insured or the estate of the insured, (2) the heirs of the insured, or (3) any *other* person having an interest in the policy—are plainly ones who *could* have an interest in the policy *if* the beneficiary designated in the policy no longer had a right to the benefits of the policy. A claim by such a person would clearly give the insurer notice of the extinguishment of the former wife/beneficiary’s interest in the policy and of the existence of a claim by one other than the beneficiary designated in the policy. Thus, “other person” logically means a person other than the claimant (beneficiary) already known to the insurer. Absent written notice of a claim under the policy by one of the persons identified in the statute before making payment on its policy, the insurer is discharged of all liability on the policy for payment of its proceeds in accordance with the terms of the policy. This interpretation advances the clear purpose of the statutory language at issue, which is to protect an insurer that pays its policy proceeds in accordance with the terms of the policy absent the requisite notice of a claim by someone other than the beneficiary designated in the policy. In my view, the plain language of the statute mandates this conclusion. [*Id.* at 675-676; emphasis in original (FITZGERALD, J., dissenting).]

HATHAWAY, J., would grant leave to appeal.



0601

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 4, 2010

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk

STATE OF MICHIGAN
COURT OF APPEALS

GAYLORD GENAW, JR., Personal
Representative of the ESTATE OF GAYLORD
GENAW, SR.,

Plaintiff-Appellee,

v

CINDY GENAW,

Defendant,

and

UNUM LIFE INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
October 6, 2009
9:00 a.m.

No. 284214
St. Clair Probate Court
LC No. 07-000069-CZ

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

TALBOT, P.J.

Defendant, Unum Life Insurance Company (“Unum”), appeals as of right from the order granting summary disposition in favor of plaintiff, Gaylord Genaw, Jr., as personal representative of the Genaw Estate (the “Estate”). We affirm.

I. Factual and Procedural History

This action involves the erroneous payment of insurance proceeds to defendant, Cindy Genaw (“Genaw”), the ex-wife of plaintiff’s decedent. In 2001, the decedent obtained an insurance policy with Unum valued at \$111,000 and designated Genaw as his beneficiary. The decedent and Genaw divorced on July 3, 2006. Their judgment of divorce specifically contained a waiver provision, which extinguished both parties’ respective interests in any insurance policy on the other’s life. Only days following the entry of the divorce judgment, the decedent was killed in an automobile accident. His beneficiary designation on the life insurance policy with Unum had not been changed.

On October 2, 2006, a loss report was completed that listed Genaw as the claimant and designated her relationship to the decedent as an “ex-spouse.” Approximately two weeks later, Genaw filed a claim for benefits and indicated on the form that the decedent was divorced. A

death certificate, which indicated decedent's marital status as divorced, was also submitted with a copy of the benefits claim. Upon receipt of the claim information, Unum conducted an investigation and determined that benefits were payable pursuant to its policy. Shortly after receiving a copy of the beneficiary designation form, which continued to list Genaw as the policy beneficiary, Unum remitted payment to her in the full amount of the policy.

Approximately one month later, plaintiff was appointed the personal representative of the decedent's estate and became aware of the existence of the Unum policy. Plaintiff contacted Unum on January 16, 2007, seeking to claim the policy benefits on behalf of the Estate. Unum denied the claim based on the policy already having been discharged. Plaintiff initiated litigation against Genaw and Unum to recover the monies remitted by Unum for the Estate. The trial court granted partial summary disposition in favor of plaintiff against Genaw in the amount of \$111,000. The trial court ordered that the funds remaining in Genaw's bank account in the amount of \$42,659.54, paid to her by Unum, be seized and held in escrow in partial satisfaction of the judgment.¹ In addition, the trial court granted partial summary disposition in favor of plaintiff against Unum in the amount of \$111,000, with a setoff for \$42,659.54, the amount recovered from Genaw. This appeal focuses exclusively on the interpretation and meaning of the statutory language comprising MCL 552.101(2).

II. Standard of Review

"The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statute's plain language." *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). "If the meaning of a statute is clear and unambiguous, then judicial construction to vary the statute's plain meaning is not permitted." *Id.* "The Legislature is presumed to have intended the meaning it plainly expressed." *Watson v Michigan Bureau of State Lottery*, 224 Mich App 639, 645; 569 NW2d 878 (1997). Further, "[a] court must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute. Statutory language should be construed reasonably, keeping in mind the purpose of the act." *Id.* "[W]e are bound to interpret plain statutory language as written." *Dawe v Dr Reuvan Bar-Levav & Assoc, PC*, 279 Mich App 552, 569; 761 NW2d 318 (2008), lv granted 483 Mich 999 (2009).

III. Analysis

MCL 552.101(2) states, in its entirety:

Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by

¹ The trial court also awarded plaintiff \$15,650 in damages against Genaw, finding her in violation of MCL 700.1205(4), for wrongful conversion or embezzlement of property rightfully belonging to the Estate.

assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. *However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.* [Emphasis added.]

As discussed by this Court in *Metropolitan Life Ins Co v Church*, 150 Mich App 539, 544-545; 389 NW2d 124 (1986):

The purpose of the 1939 amendment to M.C.L. § 552.101; M.S.A. § 25.131 was to resolve the situation where a divorced wife could inadvertently receive the proceeds of a forgotten policy.

“Prior to the addition in 1939 of the above-quoted portion of the statute to MCLA § 552.101, the wife was entitled to the proceeds of the policy when she remained the designated primary beneficiary *after a divorce*. *Ancient Order of Hibernians v Mahon* (1922), 221 Mich 213 [190 NW 696] and *Guarantee Fund Life Association v Willett* (1927), 241 Mich 132 [216 NW 369]. The effect of the amendment, as stated in the title to the statute, in the judgment of divorce, and, in the statute itself, was to affect the interest of the *wife* in the insurance policy and thus cure the situation where a divorced wife could *inadvertently receive* the proceeds of a perhaps forgotten policy. ‘Inadvertently receive’ should be stressed for the statute does not prohibit the husband or divorce judgment itself from retaining or renaming the wife as the primary beneficiary. It simply requires affirmative action on the part of the court or husband to retain the divorced wife as the primary beneficiary and thus eliminate what could be, and usually appears to be, the inadvertent payment of the life insurance proceeds to a divorced wife.” *Starbuck v City Bank & Trust Co*, 384 Mich 295, 299; 181 NW2d 904 (1970) (emphasis in original).

Clearly, the purpose of the statute is to resolve inconsistencies and problems that originated in family law when an ex-spouse waived their right to a policy of insurance (or other benefit) but a change in beneficiary was not effectuated. This is evidenced by the language that precedes the disputed portion of the statutory subsection imposing a requirement that all judgments of divorce include provisions clarifying the rights of former spouses to retain an interest in certain, identified benefits or policies.

On appeal, it is the contention of Unum, and adopted by the dissent, that the language of MCL 552.101(2) does not encompass notice of a claim asserted by a beneficiary and that the information provided by Genaw, which merely alerted Unum to the existence of a divorce without submission of an actual copy of the judgment or its explicit terms, was insufficient to place the insurer on notice or to impose liability for payment of the insurance proceeds consistent

with the policy's beneficiary designation. However, such an interpretation is not consistent with the actual language of the statute because it improperly inserts wording into the statutory provision that does not exist.

The statutory language absolves an insurance company from liability for payment of the policy proceeds to the designated beneficiary unless it "receives written notice . . . of a claim under the policy and the divorce." The statute requires only notice "of a claim . . . and the divorce." The statutory requirement pertaining to the provision of notice of the existence of a divorce does not equate to a mandate that an actual copy of the document or detailed information regarding the content of a judgment of divorce be submitted in conjunction with the filing of a claim. This is consistent with the definition of "notice" provided in case law as:

"[W]hatever is sufficient to direct attention . . . to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. Notice must be of such facts that would lead any honest man, using ordinary caution, to make further inquiries in the possible rights of another in the property." [*Royce v Duthler*, 209 Mich App 682, 690; 531 NW2d 817 (1995), quoting *Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535; 464 NW2d 713 (1990).]

Interpreting the statute as merely requiring the providing of notice of the existence of a divorce is both consistent with its language and fulfills the intended purpose of trying to preclude the inadvertent payment of benefits to the wrong person.

In addition, the statutory language allows such notice to be provided "by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, *or any other person having an interest in the policy.*" (Emphasis added.) Through a strained path of reasoning, the dissent and Unum contend that "any other person having an interest in the policy" excludes a named beneficiary. However, that is inconsistent with the statutory language. The wording is not restrictive as denoted by the use of the word "any." The statute is purposefully broad and encompassing and requires an inclusive definition of who may satisfy the definition of "any other person having an interest in the policy." It is difficult to comprehend how a designated beneficiary would not be encompassed in such a definition. As indicated by the statutory language, the insured, the insured's estate, and an heir are specifically identified as having a potential interest in a policy. Who, other than a designated beneficiary, could also be construed as having an identifiable "interest" in the policy? Given the intent of the statutory provision to preclude "inadvertent payment" of benefits to the wrong individual, it cannot be disputed that the designated beneficiary, if unchanged following entry of a divorce judgment, is the most obvious person targeted by the provision from receiving the proceeds of the policy and the most likely to assert a claim.

While factually distinguishable from the present case, our Supreme Court's ruling in *Thom v Washington Nat'l Ins Co*, 341 Mich 522; 67 NW2d 809 (1954) is instructive. In *Thom* a dispute existed regarding whether an estate administrator provided the insurance company with notice of the decedent's divorce from the designated policy beneficiary. The Court determined that the estate did not have a cause of action against the insurance company based on the failure to provide notice to the insurer of the existence of a divorce. *Id.* at 523-525. The *Thom* Court

ruled in relevant part, “that ‘giving plaintiff’s testimony its full weight and considering the alleged writing made by the woman clerk to be written notice, there is no testimony that such notice or information advised the defendant insurance company *that a divorce decree had entered.*’” *Id.* at 526 (emphasis added). Notably, the Court merely required notice of the entry of a divorce decree, not the actual submission of the judgment or a detailed elucidation of its provisions.

In *Thom*, the Court determined that notice of a divorce was not provided. Hence, the insurance company could not be held liable consistent with the language of MCL 552.101. As such, the Court’s ruling is reasonable:

The statute is explicit and we are not acquainted with any reason to depart from its terms and in effect, in a case such as this, place upon the company the onus of investigating all ramifications of a patently defective notice. We feel that the statute is intended to do more than put the company “on guard.” It is intended to be a conclusive determinant of liability if the prescribed procedure is followed. [*Id.* at 526-527.]

In contrast, in the circumstances of this case, it is undisputed that the Genaw reported her marital status as that of an ex-wife and informed the insurance company of the existence of the divorce from the decedent as part of her claim submission. Consistent with the holding in *Thom*, this notice did more than merely place the insurance company “on guard,” it required them to investigate further before remitting payment of the benefits to the designated beneficiary. Further, the statute only implies that an insurance company may be liable if it pays the proceeds of a policy to a designated beneficiary, despite having received notice of a claim and the existence of a divorce. The statute does not mandate the automatic imposition of liability following the receipt of notice. In accordance with the statute, an insurance company is only “discharged” from the imposition of liability if it pays the benefits in accordance with the policy designation and does not receive written notice of a claim and a divorce.

Under the factual circumstances of this case, it is undisputed that Unum received a claim from Genaw, which specifically acknowledged both her status as the ex-wife of the decedent and the existence of a divorce. Consequently, this information, submitted in conjunction with her claim, was sufficient to meet the notice requirement imposed by the existing statutory language and did not automatically absolve the insurance company of its liability for payment of the proceeds to the designated beneficiary.

It is important to recognize that this statute may prove to be more confusing than helpful to insurance companies as the determination of the proper beneficiary for payment of policy proceeds is highly dependent on factual circumstances unique to each case. For example, a specific concern is the statute’s failure to indicate when it is preempted under ERISA, 29 USC 1001 *et seq.* Although these parties have stipulated that this policy is exempt from ERISA because it was not issued as an employee-related benefit, in cases where MCL 552.101 is preempted, irrespective of having received notice of a divorce, insurance companies are mandated to pay insurance policy proceeds in accordance with the contractual beneficiary designation. *Sweebe v Sweebe*, 474 Mich 151, 154-155; 712 NW 2d 708 (2006), citing 29 USC 1104(a)(1)(D). Consistent with preemption, in cases falling within the purview of ERISA, liability is typically relegated to the ex-spouse who engaged in the fraudulent or wrongful

retention of the policy proceeds because of their execution of a waiver to such benefits within a judgment of divorce. *Moore v Moore*, 266 Mich App 96, 98; 700 NW2d 414 (2005).²

While the more logical and straightforward course would be to adopt the methodology and procedure followed by cases preempted by ERISA, it is for the Legislature to determine the necessity of modification to the statute. In the interim, the courts can only attempt to follow the dictates of the current statutory language as it is written.

Affirmed.

/s/ Michael J. Talbot

/s/ Joel P. Hoekstra

² See also *Metropolitan Life Ins Co v Flusty*, 545 F Supp 2d 624 (ED Mich, 2008); *Brown v Wright*, 511 F Supp 2d 850 (ED Mich, 2007); *Seaman v Johnson*, 184 F Supp 2d 642 (ED Mich, 2002); *Metropolitan Life Ins Co v Pressley*, 82 F3d 126 (CA 6, 1996); *Kennedy v Plan Administrator for DuPont Savings and Investment Plan*, ___ US ___; 129 S Ct 865; 172 L Ed 2d 662 (2009); *Egelhoff v Egelhoff*, 532 US 141; 121 S Ct 1322; 149 L Ed 2d 264 (2001).

STATE OF MICHIGAN
COURT OF APPEALS

GAYLORD GENAW, JR., Personal
Representative of the ESTATE OF GAYLORD
GENAW, SR.,

Plaintiff-Appellee,

v

CINDY GENAW,

Defendant,

and

UNUM LIFE INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
October 6, 2009

No. 284214
St.Clair Probate Court
LC No. 2007-000069-CZ

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

FITZGERALD, J. (*dissenting*).

I respectfully dissent because I do not believe that Cindy Genaw, as the contractual beneficiary of the insurance policy, is one of the persons qualified to provide the necessary notice under MCL 552.101(2).

Unum Life Insurance Company issued a group insurance policy to Upper Northwest Bankers Association.¹ The policy provided accidental death and disability (AD&D) coverage for customers of members of the Northwest Bankers Association who enrolled under the policy, including decedent. Decedent enrolled in the plan on August 10, 2001, and designated Cindy as his beneficiary. Decedent had a total of \$111,000 in AD&D coverage, including benefits payable under an escalator clause.

¹ The policy is not governed by the Employees Retirement Income Security Act of 1974 (ERISA).

The Genaws divorced on July 3, 2006. The judgment of divorce expressly extinguished the interest of each party in any insurance policy insuring the life of the other party. On July 6, 2006, decedent died as the result of an automobile accident. The death certificate lists decedent's marital status as divorced.

On October 2, 2006, a loss report was completed that listed Cindy as the claimant and her relationship to decedent as "ex-spouse." On October 16, 2006, Cindy filed a claim for benefits, checking the box on the claim form to indicate that decedent was divorced. Insurance Administrative Services, Inc. (IAS) forwarded the written claim and a copy of the death certificate to Unum.

In November 2006, Unum conducted an investigation of Cindy's claim and determined that the death was a loss for which policy benefits were payable. On December 1, 2006, Unum received a copy of the beneficiary designation form naming Cindy as the policy beneficiary. On December 4, 2006, Unum paid to Cindy the \$111,000 in benefits payable under the policy. Unum knew before paying the claim that decedent and Cindy were divorced.

On December 18, 2006, plaintiff was appointed personal representative of decedent's estate. Until that time, he was unaware of the existence of the Unum policy. On January 16, 2007, plaintiff contacted Unum, seeking the policy's benefits. This was the first time that Unum became aware of plaintiff's claim to the policy benefits. On January 19, 2007, Unum denied the claim because the policy had already been discharged.

Plaintiff thereafter sued Cindy and Unum and managed to recoup \$42,659.94 from Cindy's savings account, which was all she had left of the insurance proceeds.² Plaintiff eventually moved for summary disposition under MCR 2.116(C)(10), asserting that the estate had a right as a matter of law to the balance of the policy's benefit. The probate court ordered Unum to pay the balance, \$68,340.46, and subrogated Unum to Cindy. The court's decision turned on its interpretation of MCL 552.101(2), which provides as follows (emphasis added):

Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. *However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or*

² The record reveals that Cindy's expenditures from the insurance proceeds included, among other things, cash gifts to her sons and the purchase of a car.

the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.

The probate court held that the claim and loss report filed by Cindy constituted written notice of a claim and the divorce by “any other person having an interest in the policy,” and so Unum was not statutorily absolved of liability. The court reasoned that a “careful reading” of the statute “does not require that notice be given by someone other than the named beneficiary.” The court concluded that the word “other” in the second to last clause of the statute’s last sentence “was meant to be an all[-]inclusive clause including anyone else with an interest in the policy other than the insured, his estate, or one of his heirs.” Thus, the court reasoned, Cindy was one of the persons qualified to give notice.

Interpretation of MCL 552.101(2)

Under MCL 552.101(2), a judgment of divorce is to determine all rights of the wife in and to, inter alia, any policy of life insurance upon the life of the husband in which the wife was named as beneficiary. Only if the judgment of divorce does not determine the rights of the wife in and to a policy of life insurance is the policy payable to the estate of the husband or to the named beneficiary if the husband so designates. Importantly, the statute also provides that the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice by or on behalf of (1) the insured or the estate of the insured, (2) 1 of the heirs of the insured, or (3) any other person having an interest in the policy, of a claim and the divorce.

At issue in this case is whether Unum received the requisite written notice “by or on behalf of . . . any other person having an interest in the policy, of a claim and the divorce” before payment of its proceeds in accordance with the terms of the policy. This Court reviews de novo questions of statutory interpretation. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The paramount rule of statutory interpretation is that we are to give effect to the intent of the Legislature. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004). To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. This Court must “consider both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’” *Sun Valley Foods Co v Ward*, 460 Mich 230, 236, 237; 596 NW2d 119 (1999). “As far as possible, effect should be given to every phrase, clause, and word in the statute, and we should avoid a construction that would render any part of the statute surplusage or nugatory.” *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001).

Only one case interprets the pertinent last sentence of MCL 552.101(2). In *Thom v Washington Nat'l Ins Co*, 341 Mich 522; 67 NW2d 809 (1954), the decedent had purchased a life insurance policy from an insurance company that merged with the defendant. The defendant assumed the decedent’s policy, which named his wife as his beneficiary. *Id.* at 523. The former insurance company had issued policies to members of the Automobile Club of Michigan, of which the decedent was a member. *Id.* at 523, 526. The decedent’s policy was renewed

annually with his club membership. *Id.* at 523. The decedent and his wife later divorced, but the beneficiary designation remained unchanged. *Id.* The decedent died five years after the divorce, after which his ex-wife filed a claim on the policy.

The plaintiff testified that after the decedent's death, he went to the Dearborn office of the automobile club and informed an unidentified clerk that the policy should be paid to the attorney for the estate. *Thom, supra* at 525. The plaintiff testified that the clerk wrote a memorandum with this information and attached it to the policy. The memorandum could not be located, however, and the defendant asserted that it had never received it. *Id.* The defendant paid the policy benefit to the ex-wife. *Id.* at 523. The estate sued them both for improperly paying and receiving the benefit. The trial court concluded "that 'giving plaintiff's testimony its full weight and considering the alleged writing made by the woman clerk to be written notice, there is no testimony that such notice or information advised the defendant insurance company that a divorce decree had entered.'" *Id.* at 526. The trial court ruled against the ex-wife for the full amount of the policy, but held that the plaintiff had no cause of action against the defendant insurer because the insurer had no notice of the divorce. *Id.* at 523-525. On appeal, the Supreme Court affirmed the lower court based on the statutory language:

The statute is explicit and we are not acquainted with any reason to depart from its terms and in effect, in a case such as this, place upon the company the onus of investigating all ramifications of a patently defective notice. We feel that the statute is intended to do more than put the company "on guard." It is intended to be a conclusive determinant of liability if the prescribed procedure is followed.

Unlike the situation in *Thom*, Unum did in fact receive written notice of the divorce.³ Specifically, the loss report form indicated that Cindy was decedent's "ex-spouse," and Cindy checked the box on the claim form indicating that decedent was divorced.

The fact that decedent and Cindy were divorced, however, is not enough to tell Unum that Cindy, as the beneficiary under the policy, had no right to the proceeds of the policy.⁴ Indeed, the plain language of the statute absolves an insurer of liability for paying its proceeds in accordance with the terms of the policy unless before the payment it receives written notice of a claim and of the divorce *from one of the persons identified in the statute*. These delineated persons -- (1) the insured or the estate of the insured, (2) the heirs of the insured, or (3) any *other*

³ The statute does not require submission of an actual copy of the judgment of divorce to put the insurer on notice.

⁴ While MCL 552.101(2) requires that a judgment of divorce *determine* all rights of the wife in and to a life insurance policy, it does not require that the judgment *extinguish* those rights. Only when the judgment of divorce does not determine the rights of the wife in and to a life insurance policy does the policy become payable to the estate or to a named beneficiary if the husband so designates. Thus, the mere fact that the decedent was divorced did not give Unum notice that Cindy's rights in and to the policy were extinguished. Indeed, it is not unusual for a court to order a husband to maintain a policy of insurance on his life for the benefit of the wife or children.

person having an interest in the policy -- are plainly ones that *could* have an interest in the policy *if* the beneficiary designated in the policy no longer had a right to the benefits of the policy. A claim by such a person would clearly give the insurer notice of the extinguishment of the former wife/beneficiary's interest in the policy and of the existence of a claim by one other than the beneficiary designated in the policy. Thus, "other person" logically means a person other than the claimant (beneficiary) already known to the insurer. Absent written notice of a claim under the policy by one of the persons identified in the statute before making payment on its policy, the insurer is discharged of all liability on the policy of payment of its proceeds in accordance with the terms of the policy. This interpretation advances the clear purpose of the statutory language at issue, which is to protect an insurer who pays its policy proceeds in accordance with the terms of the policy absent the requisite notice of a claim by someone other than the beneficiary designated in the policy. In my view, the plain language of the statute mandates this conclusion.

While not necessary to reaching this conclusion, I note that reading "other person" as encompassing the designated beneficiary in the policy, as plaintiff suggests, violates the rule that the Legislature is presumed not to have included superfluous statutory language. See, e.g., *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 407; 605 NW2d 690 (1999) (citing "the rule against construing statutory provisions in a way that tends to render portions of the statute surplusage"). An insurer would always have received written notice of a claim before making payment, so if "other person" includes the designated beneficiary in the policy, the statute is redundant in requiring written notice of a claim and of the divorce by one of the persons named in the statute.⁵

I would reverse and remand for entry of an order granting summary disposition in favor of defendant Unum Life Insurance Company.

/s/ E. Thomas Fitzgerald

⁵ In essence, if plaintiff's construction were adopted, the statute would read as follows:

However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice . . . of the divorce.

The statute clearly requires more than mere notice of the divorce.