SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Court of Appeals Upholds Jury's Separate Findings of Fault Based on Plaintiff's Negligence Attributable to Her Intoxication and Her Comparative Negligence In General

By: Ashley S. Dickey **August 6, 2015**

SECREST WARDLE NOTES

A plaintiff may be penalized when making poor decisions beyond merely accepting a ride from an intoxicated driver. The *Rissi* decision shows that the statutory penalty under MCL § 600.2955a will apply to injuries incurred due to poor decision-making caused by intoxication or impairment, and that a jury may also be asked to determine whether a plaintiff is at fault aside from any intoxication or impairment.

* * * *

Recently, in an unpublished decision, *Rissi v Curtis and Auto-Owners/Home-Owners Ins Co*, released July 21, 2015, the Michigan Court of Appeals discussed the interplay between the significant limitation on an impaired plaintiff under MCL § 600.2955a(1) and comparative negligence in general. The impaired plaintiff penalty provides a defendant with an absolute defense to all damages, economic and non-economic, if the plaintiff is 50% or more at fault for the accident due to their own intoxication. Comparative negligence in general bars a plaintiff from recovering non-economic damages when the plaintiff is more than 50% at fault, but the plaintiff may still recover economic damages (which are reduced by the percentage of fault).

In *Rissi*, Plaintiff argued that the jury was confused about the application of MCL § 600.2955a, the impaired plaintiff penalty. The case involved a single-vehicle accident that occurred on January 8, 2011, in Muskegon, Michigan. Defendant Curtis was driving the vehicle; Plaintiff was his passenger. Plaintiff and Curtis frequented at least two different bars in Muskegon that evening where they drank alcohol together. After drinking, Plaintiff asked Curtis for a ride to her daughter's house. Curtis' vehicle left US-31 and collided with a tree and Plaintiff sustained a traumatic brain injury. At trial, medical records were admitted indicating that Curtis had a blood alcohol level of .196 mg/dl and Plaintiff had a blood alcohol level of .146 mg/dl.

Plaintiff was awarded $116,988 in damages, but this amount was reduced to $70,192.80 in light of the jury's finding that plaintiff's comparative negligence amounted to 40%. More specifically, the jury found Plaintiff to be 25% at fault due her intoxication and found her to be 40% at fault due to her own negligence in

general. Plaintiff argued that the jury was confused about the application of MCL § 600.2955a, the intoxicated plaintiff penalty, and general comparative negligence.

The jury was instructed that it could find that Plaintiff was negligent and that, if her negligence was a proximate cause of her injuries, the percentage of fault attributable to Plaintiff would be used to reduce her award. Plaintiff relied on *Piccalo v Nix* (on remand), 252 Mich App 675 (2002) to support her argument that the jury was confused by having to assess two amounts of fault.

Piccalo involved a plaintiff who was the passenger of a drunk driver. The jury found that the plaintiff was more than 50% at fault for the accident as a result of her intoxication and, based on the intoxicated plaintiff penalty, was not entitled to any damages, economic or non-economic. Plaintiff in *Rissi* attempted to differentiate *Piccolo* by arguing that, in addition to choosing to ride with a drunk driver, the plaintiff in *Piccalo* chose to drink while underage and rode in an open area of the vehicle with no restraints.

The *Rissi* Court noted that Michigan is a comparative negligence state, and that the jury was required to assess Plaintiff's general negligence under those principles. The jury was asked to consider MCL § 600.2955a as well because Plaintiff was intoxicated and ultimately determined that Plaintiff was 25% at fault for the accident due to her own intoxication and 40% at fault due to her own general negligence. The Court of Appeals affirmed the jury's determination regarding Plaintiff's fault, finding that the verdict was not logically inconsistent.

The Court of Appeals indicated that "[t]he jury may have concluded, for example, that a portion of plaintiff's negligence in accepting a ride from the intoxicated Curtis arose not from her own intoxication, but simply from her own lack of ordinary care." The fact that Plaintiff's intoxication was subsumed within Plaintiff's negligence in accepting a ride from an intoxicated Curtis was not logically inconsistent. In other words, the jury was permitted to consider Plaintiff's fault due to her intoxication and her fault due to her own general negligence as two separate amounts.

We welcome your questions -

Please contact Ashley S. Dickey at

adickey@secrestwardle.com

or 248-539-2847

SECREST
SW
WARDLE

Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secrestwardle.com

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Mark C. Vanneste
Alison M. Quinn

Editor
Linda Willemsen