SECREST WARDLE NOTES

The *Kemp* decision highlights a court's reluctance to apply one of the exceptions outlined in MCL § 500.3106 when it is clear that the parked vehicle is not involved "as a motor vehicle." The focus was mainly on the "transportational function" of the vehicle to determine that it was not being used as a motor vehicle at the time of the injury. The detailed facts surrounding an incident are imperative to whether the injury is covered under the Michigan No Fault Act.

No-Fault for Parked Cars: Court Reiterates the Importance of the Transportational Function of a Vehicle to Find that No Coverage Applies

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By Alexander R. Baum

Generally, injuries involving parked vehicles do not trigger coverage under the Michigan No Fault Act. A claimant must instead show that one of the exceptions in MCL §500.3106(1) applies to the facts of the injury. Specifically, the statute provides as follows:

(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

(a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.

(b) . . . the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto

or lowered from the vehicle in the loading or unloading process.

(c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

Not only must a claimant fit into one of the exceptions, but §3106(1) also requires that the injury arose out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle. In addition, the injury has to have a causal relationship to the parked motor vehicle. Michigan Courts have long held that the "nexus between the injury and the use of the vehicle as a motor vehicle" must be "sufficiently close" to justify recovery of benefits. *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635 (1997). In other words, "[w]hether an injury arises out of the use of a motor vehicle 'as a motor vehicle'" for purposes of MCL §500.3106 "turns on whether the injury is closely related to the transportational function of automobiles." *McKenzie v Auto Club Ins Assn*, 458 Mich 214, 215 (1998).

In the recently released opinion in *Kemp v Farm Bureau Gen Ins Co of Mich*, unpublished opinion per curiam of the Court of Appeals, issued May 5, 2015 (Docket No. 319796) Plaintiff was seeking to recover no fault benefits after he injured himself falling on his driveway while unloading personal effects from the backseat of his pickup truck. Defendant insurer Farm Bureau filed a motion for summary disposition arguing that Plaintiff's injury did not satisfy the nexus between the injury and the use of the vehicle as a motor vehicle. The trial court granted Defendant's motion and the Court of Appeals affirmed.

Specifically, Plaintiff testified that he was unloading his items with one hand against the backseat; he leaned into the vehicle, picked the items up, and twisted away from the vehicle to set them down at which point his calf muscle ruptured. While the injury clearly took place during what could be considered the unloading of the truck, the Court looked to see whether the truck was being used as a motor vehicle at the time of the accident.

In the 2-1 decision, the Court of Appeals ruled that the injury had nothing to do with "the transportational function" of his truck, and, therefore, his injury did not arise out of the use of a motor vehicle as a motor vehicle. The *Kemp* Court reasoned that Plaintiff's truck, which he used as a storage space for his personal items, was merely the site where the injury occurred and any causal relationship between the injury and the parked truck was incidental.

Accordingly, the Court of Appeals in *Kemp* held that, as a matter of law, Plaintiff was not entitled to benefits under MCL §500.3106.

Of note, in her dissent Judge Beckering opined that because the injury occurred due to

Plaintiff's reaching into the back of the truck and lowering property, the facts of the accident fit squarely within the provisions of MCL §500.3106(1)(b). Therefore, she opined that he should be entitled to coverage.

We welcome your questions -
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