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Michigan Supreme Court Holds *Only* Wheelchair Accessible Van Modifications To Be Allowable Expense

By Alison M. Quinn

On May 23, 2013, the Michigan Supreme Court released an opinion in the case of *Admire v Auto-Owners Insurance Company* (Docket No. 142842), a lawsuit for vehicle modification expenses under the Michigan No Fault Act. The specific issue before the Michigan Supreme Court in *Admire* was whether under MCL 500.3107 an insurer must pay the entire cost of a modified van rather than simply the costs of the modifications necessary to make it wheelchair accessible .

SECREST WARDLE NOTES:

In *Admire*, the Court expanded the application of *Griffith*, *supra*. Accordingly, in vehicle and home modification/accommodation cases insurers are now only required to pay for the costs of modifications, rather than the full costs of a vehicle or home unless the expense of the modifications are so integrated that they "cannot be easily separated into unit costs."

Plaintiff, Kenneth Admire was confined to a wheelchair following a 1987 accident where his motorcycle collided with a motor vehicle insured with Auto-Owners Insurance Company (Auto-Owners). From 1988 through 2000, Admire and Auto-Owners entered into agreements where Auto-Owners agreed to pay for the full cost of a wheelchair accessible van, expecting that the vehicle would last for seven-years. When it came time for a new van in 2007, however, Auto-Owners provided that it would only pay for the modifications done to a new van to make it wheelchair accessible as well as medical mileage incurred in relation to the accident. The reasoning was that the full cost of the van was not required under either the parties' agreement or the No Fault Act. In the Ingham County lawsuit, Admire, through his Guardian, sought reimbursement for the out-of-pocket expenses paid for a new van after Auto-Owners paid for the modifications and, the trade-in value of the van was applied to the purchase price. Judge Thomas Brown granted summary disposition in favor of Admire.

Auto-Owners appealed to the Michigan Court of Appeals. In an unpublished decision issued on February 15, 2011, the Court of Appeals affirmed the trial court's ruling and held that the cost of the van must be covered in its entirety. In so holding, the Court of Appeals relied on a prior decision where its court held that when the costs of a product are "blended," the whole cost is an allowable expense if it is sufficiently related to the accident-related injuries. Moreover, because Admire could not drive an unmodified van, the entire expense should be covered. Auto-Owners sought leave to appeal to the Michigan Supreme Court. Leave to appeal was granted and oral arguments took place on November 14, 2012.

In its May 23, 2013 Opinion, the Michigan Supreme Court held that only the modifications to the van are an allowable expense under the No Fault Act because only the modifications are "for an injured person's care, recovery, or rehabilitation" under MCL § 500.3107(1)(a). The Court relied on its 2005 decision in *Griffith v State Farm Mutual Auto Ins Co*, 472 Mich 521 (2005). In *Griffith*, the Court defined the terms "care," "recovery," and "rehabilitation" in determining that the cost of food was not an allowable expense where it was consumed at home, because it was unlike hospital food (an allowable expense) that a person was required to eat while being cared for in that facility.

The *Admire* Court reinterpreted the application of MCL 500.3107(1)(a) with respect to when an expense is allowable for an injured person's care, recovery, or rehabilitation in cases involving accomodations. The Michigan Supreme Court first noted that the term "for" in the statute shows that there must be a casual connection between the expense and the person's care, recovery, or rehabilitation. Further, the Court noted that an expense can be either "combined" meaning that an ordinary product or accommodation is joined with one for care, recovery, or rehabilitation, or it can be "integrated" in that the ordinary expense is blended with the expense needed for care, recovery, or rehabilitation such that it "cannot be separated easily into unit costs." The example of a shoe insert was used. The cost of a medical insole may be an allowable expense but the actual shoe itself is an ordinary expense and not compensable. This is a combined expense. On the other hand, a whole custom shoe would be an integrated product if for an injured person's care, recovery or rehabilitation since the ordinary expense cannot be separated.

The Michigan Supreme Court held that modifications done to a van to make it wheelchair accessible was a "combined" product or accommodation. Since only the modifications—and not the van itself—was for Admire's care, recovery, or rehabilitation and could be separated out from the base price of the van, only the modification costs were compensable under the No Fault Act.

The *Admire* holding makes clear that costs should be analyzed to determine whether they are ordinary expenses or for an injured person's care, recovery, or rehabilitation. The new "combined" versus "integrated" analysis will likely be the subject of appellate decisions to come.

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