

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

06.11.10

Joy Riders In Stolen Jeep Not Excluded From No Fault PIP Benefits

By Brandy Kuretich

The Michigan Court of Appeals issued a published opinion on June 8, 2010 in the case of *Henry Ford Health Systems v Esurance Ins Co* finding that the trial court should have granted Henry Ford Health System's motion for summary disposition because there was no evidence that Hamilton, the patient, was using a motor vehicle that he had taken unlawfully. The Court of Appeals rendered this opinion even though the jury found Hamilton was using the Jeep at the time of the accident and that he had unlawfully taken the vehicle without a reasonable belief that he was entitled to use it.

The evidence showed that Hamilton's girlfriend, Profic, borrowed the Jeep from an acquaintance for a small fee. Profic knew the Jeep was stolen. She was not given a key to operate the Jeep, the ignition cylinder had been removed and the driver's side door lock was missing. Profic took possession of the Jeep while it was running; she did not know how to turn off or restart the Jeep without a key. Upon taking possession, Profic picked up Hamilton and they drove around for three to five hours. They made several stops to visit friends where they would leave the Jeep running and unattended. Eventually, they were involved in an accident with a utility pole where Hamilton sustained severe and permanent injuries. He was treated by Henry Ford Health System.

Henry Ford Health System argued that Hamilton was not excluded from PIP benefits because there was no evidence that he had taken the vehicle unlawfully. It was *already* "taken" before he became a passenger. Esurance argued that Hamilton was excluded from PIP benefits, pursuant to MCL 500.3113(a), because he was using a motor vehicle that he had taken unlawfully.

SECRET WARDLE NOTES:

According to the Court of Appeals, MCL 500.3113(a) does not exclude PIP benefits from people who were not involved in both the unlawful taking and the unlawful use of the motor vehicle. The Court of Appeals disregarded the jury finding that there was sufficient evidence to conclude that the passenger in this case had unlawfully taken and used the Jeep without a reasonable belief that he was entitled to take and use the Jeep. Instead, the Court of Appeals substituted its own interpretation of the facts and found that Hamilton was only involved in the "use" of the Jeep and not involved in the "taking" of the Jeep.

The Court of Appeals reasoned that it is up to the Legislature, not the Court, to change the statutory language of the MCL 500.3113(a) if it meant to exclude all persons involved in the unlawful use of motor vehicles. It is likely that this published opinion will be appealed to the Michigan Supreme Court.

CONTINUED...

The Court of Appeals engaged in the process of interpreting the construction of the statutory language of MCL 500.3113(a). In addition to inquiring as to the lawfulness of the taking, the Court of Appeals found an additional issue: whether the person seeking coverage was the one who actually “took” or had been engaged in the “taking” of the vehicle.

The Court of Appeals found that Hamilton did not engage or participate in any act whereby he took possession or gained control of the Jeep. “He never ‘took’ the Jeep from anyone or anyplace.” There was no evidence that Hamilton “had taken” the Jeep, let alone that he took it unlawfully. Hamilton merely participated in the “use” of the Jeep that had already been taken.

The argument that Hamilton participated in the “on-going” taking of the Jeep was not persuasive to the Court of Appeals because it circumvented the statutory language and was inconsistent with the words “had taken” which implicates a completed act. “There can be no reasonable dispute that Hamilton was ‘using’ or making use of the Jeep as a passenger for purposes of transportation when the accident occurred, but, for the reasons stated above, he was not involved in the taking of the vehicle. Had the Legislature intended to preclude receipt of benefits by an injured person under the circumstances presented here, it could simply have provided that PIP benefits are not recoverable by a person who was using a motor vehicle ‘which he or she had taken or was using unlawfully.’” The words “had taken” and “had used” have different meanings. To be excluded, the statute requires that a person both take and use a vehicle.

Because Hamilton “used,” but did not “take,” the Jeep, he was not excluded from receiving PIP benefits. Therefore, Henry Ford should have been granted summary disposition. The case was reversed and remanded for entry of judgment in favor of Henry Ford and Henry Ford was awarded taxable costs pursuant to MCR 7.219.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2010 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Thomas J. Azoni
John H. Cowley, Jr.

Editor

Bonny Craft

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newslines, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at swsubscriptions@secrestwardle.com or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowner's Alert – Defense strategies for property owners and managers
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
Standards – A guide to avoiding risks for professionals
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability