

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Pizza case – Deliver at your own Peril!

By Timothy A. Bahorski, J.D., CPCU

Case Name: *Amerisure Mutual Ins Co v Farmers Ins Exchange* (Unpublished)

Issue: Whether an exclusion for vehicles used to “carry persons or property for a charge” applied where the accident took place when the vehicle was being used to deliver pizzas?

Court: Michigan Court of Appeals (May 4, 2004)

Holding: An exclusion for vehicles used to “carry persons or property for a charge” is unambiguous and applies to a vehicle operated by a person hired to deliver pizzas.

The case arose from an automobile accident in which a vehicle driven by Alcini struck and injured Lease. At the time of the accident, Alcini he was delivering pizzas for Pizza Czars. Lease sued Alcini and Pizza Czars.

Farmers insured Alcini’s vehicle under his mother’s insurance policy. Farmers denied Alcini’s claim under a business-use exclusion because the accident occurred while Alcini was carrying property (Pizzas) for a charge. Amerisure insured Pizza Czars employees’ vehicles used in the course of Pizza Czars’ business.

Farmers filed a declaratory action against Alcini, Pizza Czars and Lease seeking a declaration that it was not required to defend or indemnify Alcini. Amerisure and Pizza Czars filed a separate declaratory action against Farmers and Alcini seeking a declaration that Farmers was obligated to defend and indemnify Alcini and Pizza

SECRET WARDLE NOTES:

It is not often that the appellate courts literally interpret a policy exclusion especially when it involves the Michigan No-Fault Insurance Act. The Court of Appeals ruled that the insurers business use exclusion did not violate the No-Fault Statute. There was other available coverage, so arguably there was “no harm/ no foul”. The case is important not only for upholding the exclusion, but it continues a trend of Michigan appellate cases in which statutes and policy language are being interpreted as written.

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Czars. After the cases were consolidated, both Farmers and Amerisure filed motions for summary disposition. Farmers argued that there was no genuine issue of fact as to whether it owed a duty to defend Alcini. Amerisure argued that Farmers, the primary insurer, had the duty to defend. The trial court granted Farmers' motion, denied Amerisure's motion and dismissed Amerisure's declaratory action.

On appeal, the Court of Appeals affirmed. The Court of Appeals concluded that the unambiguous business-use exclusion precluded Farmers' coverage under the facts. The court noted that it had previously held that when a person is hired to deliver pizzas, the delivery of the pizzas is for consideration. *Amerisure Ins Co v Graff Chevrolet, Inc*, 257 Mich App 585, 596; 669 NW2d 304 (2003), rev'd in part on other grounds ___ Mich ___ (Docket No. 124426, decided January 29, 2004). Therefore, the exclusion precluded coverage because the accident occurred when the vehicle is used to carry "persons or property for a charge."

The Court of Appeals also held that the Farmers' business-use exclusion does not violate the no-fault insurance act. According to the court, the essential insurance act specifically permits a business-use exclusion. Because the essential insurance act and the no-fault insurance act are in pari materia, and the essential insurance act was enacted later and specifically addresses business-use exclusions, the court held it is to be treated as an exception to the no-fault act.

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

1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Leader

John H. Cowley, Jr.

Editor

Carina Carlesimo

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