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no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Exceptions To Parked Vehicle Exclusion In The Post *Frazier* Era

By Thomas Economy

One of the issues that no-fault insurers occasionally are presented with involves claimants who are injured in close proximity to, yet outside of, their parked vehicles. It is often difficult to determine whether these types of claimants are entitled to no-fault first party benefits. This is because the injury-causing event frequently involves situations where the nexus between the injury and the transportational function of the vehicle is muddled. A common example is where a person slips on ice while getting into a car. Historically, the courts found that *contact* with the vehicle was the determining factor. However, in recent years, the law in this area has been sharpened, resulting in a narrowing of circumstances where coverage will be found.

In *Lawrence v Meemic Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued August 2, 2012 (Docket No. 305385), the Michigan Court of Appeals unanimously upheld the dismissal of Michael Lawrence's no-fault first party case involving the exceptions to the parked vehicle exclusion. In this case, Mr. Lawrence was injured when he tripped on an uneven slab of concrete as he approached his parked car.

SECREST WARDLE NOTES:

In cases where claimants who are injured in close proximity to, yet outside of, their parked vehicles it is often difficult to determine whether no-fault benefits are available. Historically, the courts found that contact with the vehicle was the determining factor. However, since the Michigan Supreme Court's decision in Frazier v Allstate, the law in this area has been sharpened, resulting in a narrowing of circumstances where coverage will be found. This case provides further guidance regarding the application of § 3106(1), notably with respect to the scope of the entering into provision.

MCL 500.3105(1) sets forth the parameters of personal protection insurance coverage. It provides:

> "Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter."

MCL 500.3106, explains when such liability attaches in the case of a parked vehicle. In *Lawrence*, *supra*, two of the exceptions to the exclusion, § 3106(1)(b) and (c), were at issue. These exceptions state that a person is entitled to benefits if:

> "(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." [emphasis added]

In applying § 3106(1) to this case, the *Lawrence* court relied primarily on the Michigan Supreme Court's recent decision in *Frazier v Allstate Ins Co*, 490 Mich 381 (2011).

With respect to § 3106(1)(b), the court held that it did not afford Mr. Lawrence with a remedy. In this regard, his deposition testimony established that he tripped on an uneven slab of concrete and fell against the back of his car, near the taillight. Relying on *Frazier*, *supra*, the court explained that "the constituent parts of 'the vehicle' itself are not 'equipment.'" *Frazier* at 385. As in *Frazier*, *supra*, the court drew the distinction between the *vehicle* itself and *equipment mounted on the vehicle.* Because Mr. Lawrence came into contact with the *vehicle* rather than "…*equipment* permanently mounted on the vehicle" the exception did not apply. Moreover, Mr. Lawrence's injury was not the "direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading . . . process." By way of example, the court explained that an injury that occurs while carrying a box to a vehicle is not a loading accident within the ambit of § 3106(1)(b). *Block v Citizens Ins Co of America*, 111 Mich App 106, 109 (1981).

With respect to § 3106(1)(c), the issue was whether Mr. Lawrence was *entering* the car at the time the injury occurred. The undisputed evidence was that he tripped as he was walking toward the vehicle, lunged forward, hit his shoulder on the rear of the vehicle, and fell to the concrete. According to the court, this sequence of events established that Mr. Lawrence's injury occurred as he was *approaching*, rather than *entering* the car. Therefore, Mr. Lawrence did not sustain injuries while "*entering into…the vehicle"* as required by § 3106(1)(c).

Based on the foregoing, the Court of Appeals held that the trial court did not err in finding that Mr. Lawrence was not entitled to no-fault benefits under the aforementioned exceptions to the parked vehicle exclusion.

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We welcome your questions and comments.

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