

no-fault newsl ine

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Bobtail Policy Held To Provide Coverage - Even When Truck Is “Under Dispatch”

By Jack Weston

In *Besic v Citizens Ins Co of the Midwest, et al*, _ Mich App _ (2010), the Michigan Court of Appeals considered a dispute over priority as to which of three insurers was responsible for payment of Plaintiff’s first-party no-fault (PIP) benefits, affirming the ruling of the Trial Court.

Muhamed Besic, a Michigan resident, sustained personal injuries in an Ohio motor vehicle accident. At the time of the accident, Besic drove a tractor-trailer rig, hauling freight from Illinois to New York. Besic owned the tractor, registered and licensed the vehicle in Michigan, and leased it to MGR Express, Inc. (MGR) pursuant to a “Contractor Operating Agreement” (COA). MGR was based in Illinois. The COA identified Besic Express, a corporation solely owned by Besic, as the contractor and owner of the truck; Besic testified at his deposition that he owned the truck personally. The COA contemplated that, during the term of the lease, MGR would “assume all responsibility and pay for all liability insurance” for the truck “while [Besic] is operating under the terms of this Agreement,” and that Besic “has and reserves the right to contract independently for Workers’ Compensation coverage, bobtail, or physical damage insurance required hereunder and for health and accident or other insurance”

MGR bought liability insurance for the truck from defendant Lincoln General Insurance Company (Lincoln), which did not include PIP coverage. Besic purchased bobtail insurance coverage from defendant Clearwater Insurance Company (Clearwater). Defendant Citizens Insurance Company of the Midwest (Citizens) insured Besic’s household vehicles.

SECRET WARDLE NOTES:

Generally, a “bobtail” policy is a policy that insures the tractor and driver of a rig when it is operated without cargo or a trailer (*i.e.*, when it is *not* on “dispatch”). In this case, however, the Court found that, because of an endorsement to Plaintiff’s bobtail policy, the bobtail policy stood first in priority when no other coverage was available – even though Plaintiff was undisputedly “on dispatch” at the time of the accident. Insurance carriers must therefore be mindful of the terms of the bobtail policy and its endorsements, so that results unintended by the underwriter do not arise.

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Besic sued Citizens seeking payment of his PIP benefits related to the injuries he suffered in the Ohio accident. He later amended the complaint to add Lincoln and Clearwater as defendants. Clearwater filed cross-claims against Citizens and Lincoln, seeking reimbursement for the amounts it had paid Besic, asserting that Citizens and Lincoln shared a higher order of priority for payment. The cross-claim also sought reformation of the Lincoln policy if the Trial Court determined it did not include an express provision for Michigan no-fault coverage.

All parties filed motions for summary disposition. Clearwater asserted that an endorsement to its bobtail policy offered only limited coverage that did not apply when Besic had an accident while under dispatch, which was the situation in this case. The Trial Court, however, noted that this endorsement, by its terms, would only apply “if the lessee has Michigan Personal Injury and Property Protection coverages on the ‘auto.’” The question was then whether Besic was afforded PIP coverage under either the Lincoln and/or the Citizens policies.

Because Besic suffered injury while driving a motor vehicle under a lease for a period of greater than 30 days, the Trial Court held that Citizens did not have a duty to pay, as Michigan law mandated that Besic must seek PIP benefits from the insurer of the furnished vehicle, which was Lincoln. Citizen’s Motion for Summary Disposition was therefore granted.

As for Lincoln, the Trial Court held that, because the Lincoln policy did not include PIP coverage, Clearwater’s PIP endorsement stood first in priority. Further, the Trial Court held that, because the Clearwater policy supplied no-fault PIP coverage for Besic, no basis existed for reforming the out-of-state Lincoln policy to similarly provide such coverage. The Trial Court therefore granted Lincoln’s Motion for Summary Disposition and denied Clearwater’s Motions as to both Citizen’s and Lincoln, holding that Clearwater stood alone as first in priority to pay Besic’s PIP benefits.

Clearwater appealed; however, the Court of Appeals affirmed the rulings of the Trial Court.

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