

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

1.20.05

A Police Cruiser Parked on a Roadway with its Emergency Lights Flashing to Aid a Stalled Vehicle did not Present an Unreasonable Risk of Bodily Injury

By Brett Grossman

A police cruiser parked on a roadway with its emergency lights flashing to aid a stalled vehicle did not present an unreasonable risk of bodily injury such that the State could be held liable for payment of no-fault benefits.

In *Stewart v. State of Michigan*, ___ Mich ___ (rel'd October 26, 2004), Plaintiffs' motorcycle struck the rear of a police cruiser parked behind a stalled vehicle in the right lane of a five-lane road. Plaintiff Stewart was seriously injured and Plaintiff Amy died after the motorcycle struck the rear of the police cruiser.

Plaintiffs sued to recover no-fault benefits and survivor's benefits from the State of Michigan as the self-insurer of the state police cruiser. A no-fault insurer is responsible for paying first-party PIP benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle..." MCL 500.3105(1). Under the Act, accidental bodily injury "does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle..." MCL 500.3106(1), except for the exceptions set forth in MCL 500.3106. While Plaintiffs admitted that the vehicle was "parked" for purposes of the Act, they sued under the exception that the state police cruiser "was parked in such a way as to cause unreasonable risk of the bodily injury which occurred" MCL 500.3106(1)(a).

The State of Michigan filed a Motion for Summary Disposition arguing that police cruiser was a parked

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Since the police cruiser was a "parked" vehicle within the provisions of the Act, the State of Michigan, as the insurer for the vehicle, was not responsible for the payment of PIP benefits. In determining whether a "parked" vehicle is posing an unreasonable risk of harm, it is clear that courts will look to factors such as the manner, location and fashion in which the vehicle is parked. The fact that this was a police cruiser rendering emergency aid appeared to be instrumental in the Court's decision.

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vehicle (within the meaning of MCL 500.3106) at the time of the accident and that the parked cruiser did not cause an unreasonable risk of bodily injury within the meaning of that statute. The trial court agreed with the State and granted its Motion.

The Court of Appeals agreed that the police cruiser was a parked vehicle under the provisions of MCL 257.603(3), which allow a driver of an authorized emergency vehicle to park on the roadway. Nonetheless, the Court of Appeals held that both the state police cruiser and the stalled vehicle were parked in such a way as to cause an unreasonable risk within the meaning of MCL 500.3106(1)(a). The State of Michigan filed an appeal on behalf of the state police. The liability of the disabled vehicle was not at issue in the appeal.

The Michigan Supreme Court reversed the Court of Appeals' decision. It concluded that the police cruiser, while parked in a roadway travel lane to aid a stalled vehicle, did not pose an *unreasonable* risk of bodily injury within the meaning of MCL 500.3106(1)(a) under the circumstances. The Court held factors such as the fashion, location, and manner in which a vehicle is parked are material to determining whether a parked vehicle poses an unreasonable risk. In this case, although parked in a travel lane, the area was well lit, the vehicle's emergency lights were flashing, and the vehicle's spotlight was on. It was parked with the purpose of providing necessary emergency services to a stalled vehicle that itself posed a risk of bodily injury. Moreover, there was another northbound lane as well as the middle turn lane available for vehicles to use. The Court noted that nothing in the record suggested an oncoming driver would not have ample opportunity to see, react to, and avoid the hazard posed by the cruiser. Therefore, the Supreme Court reversed the decision of the Court of Appeals and reinstated the trial court's order granting the State, as the self-insurer of the cruiser, summary disposition.

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 Chair

John H. Cowley, Jr.

Editor

Carina Carlesimo

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