

Court Rules Out-of-State Semi-Truck Owner may not Seek Loss of Income or Loss of Use Under No-Fault Act

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In a recently published decision, the Michigan Court of Appeals held that an out-of-state semi-truck owner is not entitled to damages for loss of his vehicle or loss of income resulting from his inability to lease the vehicle, but that his damages are limited to Michigan's "Mini-Tort" law. (MCL 500.3135(3)(e))

In *Diallo v LaRochelle*, ___ Mich App ___; ___ NW2d ___ (2015), the plaintiff, a Georgia resident, filed a third-party lawsuit as a result of an April 16, 2011, motor vehicle accident involving the defendant's decedent, whose blood alcohol level was .20, had morphine in his blood, and was driving his motor vehicle northbound in the southbound lane at the time of the accident.

The plaintiff was not involved in the motor vehicle accident but was the owner of the semi-truck and alleged damages, including the complete loss of his vehicle and loss of income resulting from his inability to lease the vehicle. The plaintiff argued that as an out-of-state resident, he was entitled to these damages under MCL 500.3135(3)(d). In response, the defendant argued that the plaintiff's claims were barred under MCL 500.3135(3)(e), which limited the plaintiff's claim to \$500.

At the time of the 2011 accident, Michigan's "Mini-Tort" was limited to \$500; for motor vehicle accidents occurring on or after Oct. 1, 2012, the amount recoverable is up to \$1000, subject to other conditions of the Michigan No-Fault Act.

The trial court granted summary disposition in favor of the defendant. The plaintiff appealed.

On appeal, the plaintiff argued that because he was not seeking personal protection insurance no-fault benefits, but, instead, was suing for economic damages, MCL 500.3165(3)(d) applied, which provides an exception to the no-fault act's abolition of tort liability. The appellate court disagreed, stating that because the plaintiff's alleged damages arose through the "ownership, operation, maintenance, or use of a motor vehicle ...," the plaintiff "must seek recovery within the strictures of the no-fault act." The court went on to state that because the vehicle the defendant's decedent was operating at the time of the accident had the security required under the no-fault act, the immunities under the no-fault act applied, unless there was an exception.

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The appellate court closely examined the specific language of MCL 500.3135(3)(d), which allows for “[d]amages for economic loss by a nonresident in excess of the personal protection insurance benefits provided under [MCL 500.3163(4)].” Looking at the no-fault act as a whole, the appellate court held that “it is clear that the provision contains the restrictive clauses ‘by a nonresident’ and ‘in excess of the personal protection insurance benefits provided under [MCL 500.3163(4)].”

After a thorough analysis, the appellate court concluded that the plaintiff, as a non-resident, could only recover for economic damages in excess of the benefits provided under MCL 500.3163(4). The court reasoned that because the plaintiff did not have a claim for personal protection insurance benefits provided under MCL 500.3163(4), MCL 500.3135(3)(d) did not apply, and that his damages were limited to Michigan’s Mini-Tort (MCL 500.3135(3)(e)).

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