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Personal Auto Insurer Responsible for Injury to Independent Contractor Truck Driver

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The Michigan Court of Appeals blurred the precedent regarding no-fault priority in the context of trucking owner/operator arrangements in *Adanalic v Harco National Insurance Co,* Docket No. 317764 (Feb. 5, 2015) where the appellate court held that a truck driver found to be an independent contractor should look first to his/her personal insurer pursuant to MCL 500.3114(1) for PIP benefits. The court also clarified the scope of the loading/unloading parked vehicle exception and the trucker's exclusion.

In *Adanalic*, the plaintiff, Salko Adanalic, contracted with DIS Transportation to pick up, haul and deliver various loads of cargo pursuant to an owner/operator agreement. The truck and trailer in question was insured by a commercial policy from Harco procured by DIS Transportation. The plaintiff had personal auto insurance through a Michigan Millers policy procured by his wife on a personal vehicle.

The plaintiff was subsequently injured while stopped at an Indiana truck stop while he was in the process of loading pallets from another disabled vehicle onto the DIS trailer. Specifically, the plaintiff was pulling a loaded pallet onto his semi-trailer with straps and the loaded pallet fell off the trailer and pulled the plaintiff down with it. The plaintiff tried to claim benefits from both Harco and Michigan Millers and both claims were denied based on priority. The plaintiff's claim for workers' compensation benefits from DIS was also denied because he was an independent contractor.

Michigan Millers also asserted that the parked vehicle exception did not apply pursuant to MCL 500.3106(1)(b) and that the plaintiff's claims were precluded by the trucker's exclusion pursuant to MCL 500.3106(2) because workers' compensation benefits were "available to him." The trial court found Michigan Millers solely responsible for PIP benefits. Michigan Millers appealed.

Parked Vehicle Exception & The Trucker's Exclusion

The appellate court rejected Michigan Millers contention that direct physical contact with property that was being loaded or unloaded had to cause the plaintiff's injuries. MCL 500.3106(1)(b) allows recovery of no-fault benefits when "the injury was a direct result of physical contact with ... property being lifted or lowered from the vehicle in the loading or unloading process." The court found the statute did not require that the property itself inflict the injuries but that physical contact with property being loaded or unloaded is sufficient to allow recovery. In this case, the plaintiff was pulled off the trailer by contact with the pallet but was ultimately injured when he fell to the ground.

The appellate court also rejected Michigan Millers contention that the plaintiff's claims were precluded by MCL 500.3106(2) because workers' compensation benefits were denied by DIS. MCL 500.3106 (2), the "Trucker's Exclusion," bars recovery of no-fault benefits where an injured person is an employee in the course and scope of employment that is injured while loading or unloading a vehicle. The exclusion also applies when the injury occurs while the employee was entering into or alighting from a vehicle immediately after it became disabled. MCL 500.3106(2)

The appellate court noted that unlike section MCL 500.3109 which is a setoff provision, MCL 3106(2) is a provision that bars recovery of no-fault benefits only where workers compensation benefits are actually available. Since the plaintiff was deemed an independent contractor and was denied workers' compensation benefits, the court found this section inapplicable to deny benefits.

Priority

Notably, prior case law addressing the truck driver employee/independent contractor distinction has held that the applicable priority section is MCL 500.3114(3), which places the insurer of an employer furnished vehicle in top priority. This is because courts have found that regardless of the distinction, it is a commercial setting, and even if the driver is considered an independent contractor, he/she typically becomes the owner of the vehicle either by title or possession exceeding 30 days, and would, therefore, be considered an employer furnishing a vehicle to him/herself.

However, the court in *Adanalic* disregarded this distinction and found that *because* the plaintiff was an independent contractor pursuant to the owner/operator agreement and the economic reality test, he should look to MCL 500.3114(1) for PIP benefits. The court found that the plaintiff's personal insurer was first in priority.

Priority Application

This decision is sure to complicate priority disputes between truck drivers and trucking companies in an area where courts already struggle. For insurers of trucking companies, this case can be used to argue the position that an independent contractor must look first to any 3114(1) insurer.

For “bobtail” insurers, the best way to avoid the impact of this case is to argue the distinction that even if the driver is an independent contractor, 3114(3) still applies because the driver owned the vehicle and furnished it to him/herself in a commercial setting; a point not raised in *Adanalic* likely because it was not an arrangement where the plaintiff owned the vehicle and leased it back to the trucking company (DIS).

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