

# Supreme Court Clarifies Exception to Parked Vehicle Exclusion Under Michigan No-Fault Act

June 29, 2017

In a recent decision from the state's highest court, the Michigan Supreme Court held that a plaintiff's injury arising out of a parked motor vehicle was closely related to the transportational function of the motor vehicle, thus entitling the plaintiff to Michigan Personal Protection Insurance (PIP) no-fault benefits.

In *Kemp v Farm Bureau General Ins Co*, \_\_\_ Mich \_\_\_, \_\_\_ NW2d \_\_\_ (2017), after the plaintiff finished working, he placed his briefcase, overnight bag, thermos and lunch box on the floor behind the driver's seat of his pickup truck. He then drove home. When he arrived, he parked in his driveway, stepped out of the vehicle and went to retrieve his belongings. The plaintiff opened the rear door, reached into the vehicle for his belongings and sustained an injury as he was lowering them from the vehicle.

He made a claim for PIP benefits, which was denied. He then filed suit, which was summarily dismissed by the trial court finding that (1) his injury did not arise out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle; (2) his injury did not meet the parked motor vehicle exception in § 3106(1)(b) of the Michigan No-Fault Act; and (3) his injury did not have a causal relationship to the parked motor vehicle. The plaintiff then appealed to the Michigan Court of Appeals, which affirmed the trial court's judgment, where the majority concluded that the plaintiff's "injury had nothing to do with 'the transportational function' of his truck." The appellate court reasoned that the plaintiff's vehicle was used as a "storage space for his personal items" and was "merely the site" of the injury.

The plaintiff then appealed to the Michigan Supreme Court, which overruled the appellate court, after having done a three-step test: (1) was the injury a direct result of physical contact with property being lifted onto or lowered from the vehicle in the loading or unloading process; (2) was the injury closely related to the transportational function of motor vehicles; and (3) was there a causal connection between the injury and the use of a motor vehicle as a motor vehicle that was more than "but for, incidental, or fortuitous."

After having done the analysis, the Supreme Court concluded that the plaintiff created an issue of fact regarding whether he satisfied the parked motor vehicle exception in § 3106(1)(b) and the corresponding causation requirement of the three-step framework used to analyze PIP coverage for injuries related to parked motor vehicles. The Supreme Court then held as a matter of law that the

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plaintiff satisfied the transportational function requirement and reversed the appellate court's decision.

In light of this recent decision, insurers may want to consider taking a recorded statement or having an examination under oath of a claimant to determine whether the claimed injuries fall within the exception to the parked motor vehicle exclusion under § 3106(1)(b) of the Michigan No-Fault Act, which entitles a claimant to benefits.