

# Supreme Court Rules That Damages for Excess Replacement Services are no Longer Recoverable

August 20, 2012

The Michigan Supreme Court recently ruled that an injured party cannot recover damages for “replacement services” in a third-party automobile negligence lawsuit. This decision significantly reduces the exposure in catastrophic or serious-injury claims.

In *Johnson v Recca*, while walking through a gas station, Plaintiff was struck by a motor vehicle driven by Defendant, who was insured by Allstate. As a result, Plaintiff filed a third-party tort claim against Defendant, seeking damages for excess replacement services pursuant to MCL 500.3135(3)(c). The trial court dismissed the case, and the Court of Appeals reversed, concluding that Plaintiff could recover damages for excess replacement services because they are a subcategory of allowable expenses.

The Supreme Court granted leave limited to the issue of whether MCL 500.3135(3)(c) includes within its scope the cost of excess replacement services rendered more than three years after the date of the motor vehicle accident.

Analyzing the Legislature’s statutory organization of relevant portions of Michigan No-Fault Act, the Supreme Court reversed the Court of Appeals, reasoning that “[r]eplacement services’ are not described or referred to in the same subdivision as ‘allowable expenses,’ nor are ‘replacement services’ described in any subpart of ‘allowable expenses.’”

Thus, the Supreme Court held that because allowable expenses and replacement services constitute separate and distinct categories of PIP benefits and that replacement services do not fall under the purview of allowable expenses, excess replacement services are therefore not recoverable.

In sum, while third-party automobile negligence Plaintiffs may still claim damages for excess allowable expenses, work loss, and survivor’s loss under MCL 500.3135(3)(c), they may no longer claim damages for excess replacement services.

In light of the *Recca* decision, the authors of this report have contacted the Michigan Supreme Court Committee on Model Civil Jury Instructions with proposed amendments to Jury Instructions M Civ JI 36.04, M Civ JI 36.06, M Civ JI 36.15, and Jury Verdict Form M Civ JI 67.17.

SUPREME COURT RULES THAT DAMAGES FOR EXCESS REPLACEMENT SERVICES ARE NO LONGER RECOVERABLE Cont.

For further information on excess economic-loss claims in third-party automobile negligence actions, or if you have questions about how this important decision may affect your business, please contact the authors of this Rapid Report or any member of Plunkett Cooney's Trucking and Transportation Practice Group.

*Rapid Reports are distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to Gregory Gromek or any other members of the practice group. The brevity of this update prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2012. All rights reserved PLUNKETT COONEY, P. C.*