

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Like a Horse and Carriage: How the U.S. Supreme Court's Ruling in *Obergefell v Hodges* affects Michigan Auto Law

By: Renee T. Townsend

November 13, 2015

SECRET WARDLE NOTES

Obergefell v Hodges legalized same-sex marriage throughout the United States. The United States Supreme Court ruling requires states not only to recognize the marriage licenses granted to same-sex couples by other states, but mandates that a state cannot refuse to issue marriage licenses to same-sex couples on the basis of their sexual orientation.

The implications of this ruling on Michigan law are varied, but, specifically as to Michigan auto law, include considerations as to the resident relative provision, survivor's loss benefits, wrongful death actions, consortium claims, and standing to file suit.

Michigan auto insurers should be cognizant of this ruling and its implications in handling claims filed by claimants who are married to a person of the same sex.

* * * *

The United States Supreme Court in *Obergefell v Hodges* overturned the same-sex marriage bans in four states—including Michigan—by ruling that marriage is a fundamental right and that any state law that bans same-sex marriage is unconstitutional, thereby legalizing same-sex marriage throughout the country in June 2015. The dust has settled and gay marriage has now been the law of the land for several months, yet many insurers and insureds in Michigan are still uncertain of the effects of this change. The legal implications of this ruling are far-reaching, affecting everything from health insurance to property rights, and even Michigan auto law.

This case is especially significant to Michigan residents because, prior to *Obergefell*, the Michigan Constitution banned recognition of any "marriage or similar union for any purpose" between same-sex couples. This ban was one of the most restrictive in the United States, and not only prohibited same-sex couples from marrying in Michigan, but precluded recognition of even their domestic partnership agreements, civil unions, or marriages performed in other states.

With regard to Michigan auto cases, there are several issues that affect insurers and insureds in the post-*Obergefell* era. The most obvious implication involves the "spousal benefits" and "resident relative" provisions in section 3114 of the Michigan No Fault Act. Pursuant to MCL § 500.3114, an automobile insurance policy "applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident."

Prior to the *Obergefell* decision, a same-sex couple in Michigan had absolutely no status under the spousal benefits and/or resident relative provisions; these provisions simply did not apply. Moreover, because the Michigan gay marriage ban prohibited the recognition of a same-sex relationship "for any purpose," and there was a ban on second-parent adoptions in Michigan, the children of same-sex couples were often excluded from the "resident relative" provision for at least one parent. After the *Obergefell* decision, legally married same-sex couples and their children fall within the purview of "resident relative" coverage.

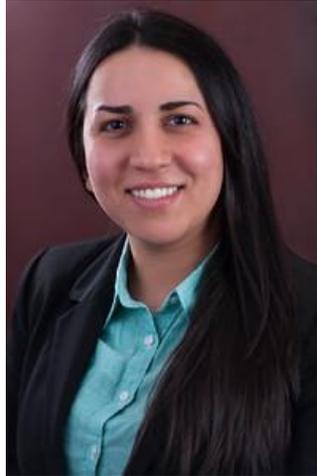
This same principle applies to "survivor's loss benefits" under MCL § 500.3108. Under that section, a decedent's spouse and children are entitled to certain No Fault benefits "payable for a survivor's loss which consists of a loss... of contributions of tangible things of economic value..." After *Obergefell*, legally married spouses and their children are entitled to these benefits.

Moreover, another implication of *Obergefell* involves loss of consortium claims in third-party auto negligence cases. A loss of consortium claim compensates the spouse of an injured person for the loss of emotional support and, at times, a physical relationship. Prior to *Obergefell*, this type of claim was not compensable for a same-sex couple, even if that couple was married in another state. *Obergefell* opens up these consortium claims to all legally married couples, regardless of sexual orientation.

The legal status of "marriage" between same-sex couples is also important in wrongful death cases. In the absence of the appointment of a personal representative, only a legally married spouse can bring a wrongful death action on behalf of a decedent for medical expenses, funeral and burial costs, and non-economic pain and suffering. The decedent's spouse is also entitled to survivor benefits in a wrongful death claim, including loss of financial support. Prior to *Obergefell*, gay and lesbian survivors could not make a wrongful death claim on behalf of their deceased spouse or partner.

As insurers and insureds in Michigan begin to navigate the legal landscape shaped by the *Obergefell* decision, it is helpful to apply the view that "same-sex marriage" is simply "marriage" in the eyes of the law. Any rights traditionally afforded to legally married couples are now afforded to legally married couples who are the same sex.

PLEASE CLICK HERE TO SIGN UP FOR SECREST WARDLE NEWSLETTERS PERTINENT TO OTHER AREAS OF THE LAW



We welcome your questions -
Please contact Renee T. Townsend at
rtownsend@secrestwardle.com
or 248-539-2859



Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secrestwardle.com

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Mark C. Vanneste

Alison M. Quinn

Editor

Linda Willemsen

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

Copyright © 2015 Secret Wardle. All rights reserved.