

# no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## Court of Appeals Allows Owner-Occupant of Uninsured, Parked Vehicle to Recover PIP Benefits

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### SECRET WARDLE NOTES

A claimant is typically barred from recovering PIP benefits when their own uninsured vehicle was involved in the accident. MCL § 500.3113(b). This exclusion only applies, however, when security is required pursuant to MCL § 500.3101(1). What happens if an uninsured vehicle is parked in a street and is involved in an accident, but is also non-operational?

The Court of Appeals answered this question in a published opinion, meaning it is binding precedent. As long as any period of time during which the vehicle was being driven or moved was completed before the accident, an occupant-owner of that vehicle is not required to maintain security on the vehicle and is not barred from recovering PIP benefits.

\* \* \* \*

In *Shinn v American County Insurance Company, Farmers Insurance Exchange, et al*, \_\_\_ Mich App \_\_\_ (2016), issued on March 29, 2016 and selected for publication, the plaintiff's vehicle was not insured, non-operational, and was parked on the street in front of her home. It had apparently been moved there from a repair shop several days before the accident. While on a walk with her baby, the plaintiff opened the door to the vehicle and sat in the passenger seat, partially inside and partially outside. While the plaintiff was seated there, a vehicle insured by American County Insurance Company (ACIC) struck the rear of the plaintiff's vehicle allegedly injuring her.

The plaintiff brought a lawsuit to recover PIP benefits against Farmers Insurance Exchange, the insurer assigned to the claim by the Michigan Assigned Claims Facility, and ACIC, the insurer of the other vehicle involved. The trial court dismissed the lawsuit when both defendants argued that, pursuant to MCL § 500.3113(b) (disqualifying owners of uninsured vehicles from PIP when the vehicle is involved in the accident) and MCL § 500.3101(1) (requiring security on a vehicle), the plaintiff was occupying an uninsured, parked vehicle and was therefore barred from recovering PIP benefits. ACIC also argued that it was entitled to summary disposition because it was not an insurer listed in the order of priority under MCL § 500.3114(4).

In the trial court, the parties relied on three cases involving parked cars to argue whether or not the vehicle was “involved” in the accident as required by the § 3113(b) exclusion. The *Shinn* Court pointed out that the three cases failed to analyze whether any security was required under § 3101(1) under the circumstances. Therefore, on appeal, the *Shinn* Court did not analyze whether the plaintiff’s uninsured vehicle was involved in the accident, but instead analyzed whether the plaintiff was required to maintain security pursuant to § 3101(1) in order to be eligible for PIP benefits.

In 1987, MCL § 500.3101(1) was changed from “security shall be in effect continuously during the period of registration of the motor vehicle” to “security is only required to be in effect during the period the motor vehicle is driven or moved on the highway.”

In *Shinn*, the plaintiff argued that she was not driving her vehicle at the time of the accident because it had just been repaired, was non-operational and, therefore, she was not required to maintain security under § 3101(1). The Court of Appeals opined that, because “any driving or movement on a highway was completed several days before the accident” and “the vehicle was parked at the time of the accident,” security was not required. Therefore, the plaintiff was not barred from recovering PIP benefits pursuant to § 3113(b) and § 3101(1).

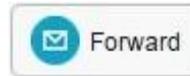
Even though the plaintiff was not barred from recovering PIP benefits, the *Shinn* Court did affirm the dismissal of ACIC because it was not in the order of priority pursuant to § 3114(4). The plaintiff apparently did not have any insurance of her own, an insured spouse, or an insured resident relative. All parties agreed that the plaintiff was an occupant of her own vehicle and that ACIC was not the insurer of the owner or registrant of that vehicle. Since ACIC was not the insurer of the owner or registrant of the vehicle occupied or the insurer of the operator of the vehicle occupied, it was not in the order of priority as defined by § 3114(4)(b).

To the contrary, Farmers, as the insurer assigned by the Michigan Assigned Claims Facility, was found to be the insurer of last priority and was not entitled to summary disposition because the plaintiff was entitled to PIP benefits.

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