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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Devil in the Details: Court of Appeals turns to the express language of the policy with respect to the requirement of direct physical contact in a claim for uninsured motorist benefits

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SECRET WARDLE NOTES

On May 12, 2016, the Michigan Court of Appeals issued a published opinion reiterating the importance of understanding the specific terms in a policy with respect to uninsured motorist coverage. Throughout the years, the Court of Appeals has examined various “linguistic formulations of uninsured motorist coverage,” noting some policies are written broadly while others are written more narrowly. To put it another way, each policy is written differently and must be carefully reviewed for the specific requirements to determine eligibility for uninsured motorist benefits.

When analyzing a claim for uninsured motorist benefits involving a phantom or otherwise unidentified vehicle, the explicit terms of the policy will likely prevail. The Court specifically distinguishes the facts of this case with similar cases involving uninsured motorist policies requiring direct and indirect physical contact with the other vehicle.

* * * *

In *McJimpson v Auto Club Group Insurance Company*, an opinion released on May 12, 2016 and selected for publication, the Court of Appeals continued to draw distinctions relative to the contractual language governing a claim for uninsured motorist benefits.

In *McJimpson*, the plaintiff was driving her vehicle on I-96 when a piece of metal flew off an unidentified 18-wheeler semi-truck and struck her vehicle. Notably, the driver of the truck did not stop. The plaintiff's windshield was shattered and when she slammed her breaks, the object rebounded and struck the roof of her vehicle. She claimed injuries to her shoulder, neck, back and spine.

Subsequent to the accident, the plaintiff filed a claim for uninsured motorist benefits pursuant to her insurance policy. The relevant provision for uninsured motorist benefits stemming from an accident involving a hit-and-run motor vehicle expressly called for "**direct physical contact**" with the vehicle. When the defendant refused to tender payment, the plaintiff filed suit.

In turn, the defendant filed a motion for summary disposition alleging that the plaintiff did not meet the requirements of the uninsured motorist provision as the plaintiff conceded she was struck by an object propelled by or from the semi-truck, and not struck by the semi-truck itself. In her response to the dispositive motion, the plaintiff argued that the policy unambiguously provided coverage for this type of claim, and further argued that at a minimum, the policy terms were ambiguous and should be construed in favor of the plaintiff. The trial court denied the motion, stating the piece of the truck that struck the plaintiff's vehicle "directly flew off the truck through the air and hit the plaintiff's car and caused the accident."

On appeal, the defendant argued that the plaintiff was not entitled to uninsured motorist benefits as a matter of law because the phrase "direct physical contact" was not ambiguous, and the undisputed facts demonstrated the unidentified semi-truck never made direct physical contact with the plaintiff's vehicle. The Court recognized well-settled tenets of contract law, noting the policy language should be given its plain and ordinary meaning, and that courts generally must construe and apply unambiguous contract provisions as written. Further, the Court recalled its history of considering various permutations of uninsured motorist coverage over the years, stating some policies are written broadly (and would likely provide coverage under this scenario), while other policies requiring the unidentified vehicle to hit or cause an object to hit a covered automobile.

Similarly, the Court observed that other policies have been written much more narrowly—including provisions requiring physical contact between the vehicle but do not include the phrase "cause an object to hit" the covered vehicle. In those cases, the courts had held *both* direct and indirect contact are sufficient to trigger coverage, and that contact with a propelled object constitutes indirect contact provided there is a "substantial physical nexus" between the propelled object and unidentified vehicle¹.

While agreeing with the plaintiff that a policy drafted in that manner would usually afford coverage, the Court noted that the policy language in this case is different than the policy language considered in the earlier cases. The uninsured motorist provision in this case is written more narrowly, providing for coverage only where the unidentified vehicle makes "direct physical contact" with the insured or her vehicle, while making no reference to propelled objects. The operative effect of this language limits the applicability of the coverage to cases where the unidentified vehicle itself strikes an insured person or vehicle.

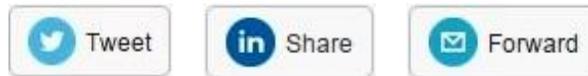
Lastly, the Court noted that the fundamental difference between "physical contact" and "direct physical contact" for purposes of an uninsured motorist coverage was previously defined by the Court of Appeals in *Hill v Citizens Insurance*, 157 Mich App 383, 394 (1987). In making its ruling to reverse and remand this case, the Court stated the direct physical contact requirement is not met where the plaintiff's vehicle was struck by something propelled by or cast off from the other vehicle, and not the vehicle itself.

¹ For a thorough discussion of a "substantial physical nexus," please see *Wills v State Farm Ins Co*, 222 Mich App 110; 564 NW2d 488 (1997).

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