

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## Supreme Court: Claimant Injured While Removing Personal Effects from Back Seat Eligible for No-Fault Benefits

By Mark C. Vanneste

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In *Kemp v Farm Bureau General Insurance Company of Michigan*, \_\_\_ Mich \_\_\_ (June 15, 2017) (Docket No. 144579), the Michigan Supreme Court overturned both the trial court and the Court of Appeals. The case arose from a September 15, 2012 incident where Daniel Kemp was in the process of removing some personal effects from the floorboard of his Chevy Silverado when he somehow injured his calf muscle. He subsequently received treatment from an urgent care center and a physician.

Kemp's no-fault insurer, Farm Bureau, denied benefits and Kemp filed suit. Farm Bureau moved for summary disposition arguing that the injury did not arise out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle, the injury did not meet the parked vehicle exception in MCL 500.3106(1)(b), and the injury did not have a causal relationship to the parked motor vehicle that was more than incidental, fortuitous, or but for. Kemp responded by requesting judgment in his favor.

The trial court granted Farm Bureau's motion finding that the injuries were not related to the use or operation of the motor vehicle as a motor vehicle and that the injury was merely incidental to the use of the vehicle. The Court of Appeals affirmed the trial court's ruling and found that the "injury had nothing to do with the 'transportational function' of his truck." Instead, the Court of Appeals found that the vehicle was simply a "storage place for his personal items" and was "merely the site" of the injury.

The Supreme Court heard oral arguments on 1) whether Kemp's injury was closely related to the transportational function of his motor vehicle, and thus whether the injury arose out of the ownership, operation, maintenance, or use of his motor

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The trial court and the Court of Appeals held that a person who was retrieving a lunch box, thermos, and overnight bag from the floor behind his driver's seat was not entitled to no-fault benefits after injuring his calf muscle in the process. The trial court and Court of Appeals found that the injury was not related to the transportational function of the vehicle.

However, the Supreme Court, after only hearing oral arguments on the application for leave to appeal, found that the injury was related to the transportational function of the vehicle. According to this ruling, claimants injured while loading or unloading even the most insignificant of personal effects may be entitled to no-fault benefits if injured in the process.

vehicle as a motor vehicle, and 2) whether Kemp's injury had a causal relationship to his parked motor vehicle that is more than incidental, fortuitous, or but for.

In regard to the first question, the Supreme Court looked to the parked motor vehicle exclusion and, more specifically, one of the exceptions addressed in MCL 500.3106(1)(b). This exclusion states that, in relevant part, an injury may qualify for no-fault benefits when it arises out of the ownership, operation, maintenance, or use of a parked motor vehicle as a motor vehicle if the injury was a direct result of physical contact with property being lifted onto or lowered from the vehicle in the loading or unloading process. The Supreme Court ultimately found that *Kemp* created a question of fact regarding whether the injury arose directly from his physical contact with property being lifted onto or unloaded from the vehicle in the loading or unloading process. Whether the property was of sufficient size and weight to have caused an injury was a question of fact for the jury.

Additionally, the Supreme Court addressed whether the injury arose from Kemp's use of the motor vehicle as a motor vehicle. Since the dictionary definition of the term "vehicle" is any device for carrying or conveying persons or objects, the person who is engaged in the activity of unloading personal effects from a vehicle upon arrival at the destination is using the vehicle for transportation function, i.e., for the conveyance of persons or objects from one place to another. The act of unloading items from his vehicle constituted the use of a motor vehicle as a motor vehicle and satisfied the transportation function requirement as a matter of law.

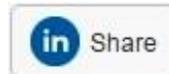
Lastly, the Supreme Court addressed whether there was a question of fact as to the causal relationship between Kemp's injury and the parked motor vehicle that was more than incidental, fortuitous, or but for. Since the injury was foreseeably identifiable with normal use of a vehicle, the Supreme Court found that Kemp had created at least a question of fact regarding whether the injury had a causal relationship that was more than incidental, fortuitous, or but for.

Based on the above analysis, the Supreme Court reversed both the trial court and the Court of Appeals.

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