

# no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## Economic Reality Check: Determining a Claimant's Status as an Employee or Independent Contractor

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The Court of Appeals recently applied the economic reality test in *Van Lieu v Farm Bureau v AMCO Insurance Company*, an unpublished opinion per curiam issued February 28, 2017 (Docket No. 330014). On August 12, 2013, Roger Van Lieu was driving a semi-truck transporting hog manure. The truck was owned by Crooked Creek Farms and insured by AMCO. While he was driving, strong winds blew his truck sideways and into a ditch causing him to suffer a number of injuries.

Eventually, Mr. Van Lieu filed a lawsuit against his own insurer, Farm Bureau, seeking no-fault benefits. Farm Bureau then filed a Third-Party Complaint against AMCO arguing that AMCO was higher in priority because Mr. Van Lieu was an employee of Crooked Creek at the time of the accident and AMCO insured the employer-furnished vehicle.

During discovery, Mr. Van Lieu testified he had been working for Crooked Creek for over a year either as a truck driver or as a staff member on their premises. He and his employer had a rather informal arrangement: there was no completed application for employment, no formal training, and Crooked Creek purportedly considered him an independent contractor. However, he was paid a weekly salary, given the company's credit card to purchase gas, and usually drove the same truck to perform deliveries. Also, when he was not driving the truck, he was given tasks to do on the farm and would bring his own specialty tools to perform mechanical repairs.

### SECRET WARDLE NOTES

How does the court decide if a person is an employee or an independent contractor? Applying the economic reality test helps determine an injured party's status as an employee or independent contractor for the purposes of MCL 500.3114(3).

In *Van Lieu v Farm Bureau v AMCO*, although the claimant's pay structure is similar to that of an independent contractor, the remaining factors of the test were all suggestive that the claimant was an employee and not an independent contractor. Often, the claimant's status as an employee or independent contractor will be the decisive variable regarding which carrier is highest in priority for no-fault benefits following an accident occurring while the claimant is an occupant of a vehicle owned by the employer.

The owner of Crooked Creek testified that he did not generally supervise Mr. Van Lieu. While he had control over Mr. Van Lieu's duties, he could complete the tasks on his own schedule. No medical or insurance benefits were provided to Mr. Van Lieu, taxes were not deducted from his check, and his income was reported via a 1099 form.

Farm Bureau moved for summary disposition alleging there was no genuine issue of material fact regarding whether Plaintiff was an employee of Crooked Creek and, therefore, AMCO was higher in priority. AMCO responded, arguing Plaintiff was an independent contractor and, therefore, Farm Bureau was higher in priority. The trial court agreed with Farm Bureau finding that Mr. Van Lieu was an employee and AMCO appealed. Was Mr. Van Lieu an employee or an independent contractor?

The Court of Appeals pointed out why this question matters - an employee in an accident while an occupant of a vehicle owned or registered by the employer receives PIP benefits from the insurer of the vehicle. However, an independent contractor is not considered an employee and, therefore, would look to their own insurer first.

For the purposes of MCL 500.3114(3), an injured party's status as an employee or independent contractor is determined by applying the economic reality test. This test requires the court to consider the following factors: control of the worker's duties, payment of wages, right to hire, fire and discipline, and the performance of the claimant's duties being an integral part of the business. The court may also consider: whether the individual furnishes his own equipment and materials, whether the individual holds himself up to the public for hire, and whether the work in question is customarily performed by an independent contractor.<sup>1</sup>

Ultimately, the Court of Appeals ruled that there was enough evidence to establish Mr. Van Lieu as an employee of Crooked Creek and that reasonable minds could not differ on the issue. The fact that Crooked Creek considered Mr. Van Lieu an independent contractor is not dispositive of his status – it is just *one factor* to consider when applying the economic reality test.<sup>2</sup>

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<sup>1</sup> *Coblentz v City of Novi*, 475 Mich 558, 579; 719 NW2d 73 (2006); *McKissic v Bodine*, 42 Mich App 203, 208-209; 201 NW2d 333 (1972)

<sup>2</sup> *Kidler v Miller-Davis, Co*, 455 Mich 25, 45-46; 564 NW2d 872 (1997)

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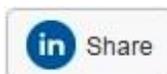
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