

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

05-21-2014

Supreme Court puts some of the joy back into joyriding.

By Drew Broaddus

Although the No-Fault Act is remedial in nature, and intended to afford broad relief to motor vehicle accident victims regardless of fault, the Act does, for public policy reasons, entirely bar certain types of claimants. For example, MCL 500.3113(a) bars a person from receiving personal injury protection (PIP) benefits when their injuries were suffered while using a vehicle that he or she “had taken unlawfully.”

Whether a vehicle was “taken unlawfully” has proven to be a difficult question. In *Spectrum Health v Farm Bureau*, 492 Mich 503 (2012)¹, the Supreme Court squarely addressed “whether a person injured while driving a motor vehicle that the person had taken contrary to the express prohibition of the owner may avail himself or herself of” PIP benefits, notwithstanding § 3113(a). The Court held that “any person who takes a vehicle contrary to a provision of the Michigan Penal Code – including MCL 750.413 and MCL 750.414, informally known as the ‘joyriding’ statutes – has taken the vehicle unlawfully for purposes of” § 3113(a).

But *Spectrum* did not address how a violation of a “joyriding” statute is established. This was the issue presented in *Rambin v Allstate Insurance Co*, __ Mich __ (2014) (No. 146256, released 5/20/14), where the plaintiff *believed* he had the owner’s permission to use a motorcycle, but the motorcycle was later found to have been stolen (plaintiff apparently received permission from the thief). The Court in *Rambin* found that “MCL 750.414 ... requires a showing of knowingly taking without authority or knowingly using without authority.” *Rambin*, Slip Op at 15. Therefore, the case was remanded so that the plaintiff could “present evidence to establish that he did not run afoul of MCL 750.414, and thus did not unlawfully take the motorcycle under MCL 500.3113, because he did not knowingly lack authority to take the motorcycle because he believed that he had authority to do so.” *Id.* at 16.

In *Rambin*, the plaintiff – who had no automobile insurance of his own and did not own a motor vehicle – claimed that, in June 2009, he joined a motorcycle club, although though he did not own a motorcycle. About two months before, Scott Hertzog’s motorcycle was stolen. On August 22, 2009, members of the club informed the plaintiff that he needed a motorcycle to participate in the club ride that night. Plaintiff claimed that a person named Andre Smith offered to loan him a motorcycle for the club ride. Plaintiff further claimed that on the evening of August 22, 2009, he went to a house on Kentfield in Detroit, where Andre handed him the keys to the motorcycle and told him that he could use it for the club ride. A few hours later, plaintiff collided with an uninsured automobile while operating this motorcycle (later determined to be Hertzog’s). After the accident, the plaintiff told police that he had borrowed the motorcycle from a friend, Andre, who lived on Kentfield – but the plaintiff had no contact information for Andre and was unable to say which house Andre resided in.

¹ See *No-Fault Newslines*, August 2, 2012, “Supreme Court Takes Some of the Joy Out of Joyriding,” by Drew Broaddus.

SECRET WARDLE NOTES:

MCL 750.414, which prohibits the unlawful taking of a vehicle, is not a strict-liability crime; it contains a *mens rea* element that the taker must have intended to take the vehicle without authority.

Unlike *Spectrum*, however, *Rambin* did not involve the taking of a vehicle against the express prohibition of the vehicle’s owner. Rather, *Rambin* presented evidence that the person who gave him permission to take the motorcycle appeared to be the rightful owner.

CONTINUED...

Plaintiff sought PIP benefits from Allstate, which insured Hertzog. Allstate denied the claim, and Titan then received the claim through the assigned claims facility. Plaintiff filed suit against both insurers, and both insurers claimed that the plaintiff was disqualified from receiving any no-fault benefits by MCL 500.3113(a). The trial court granted both insurers' motions for summary disposition. The Court of Appeals reversed, finding that summary disposition actually should have been granted in the plaintiff's favor because "there was no genuine issue of material fact that plaintiff *did not* take the motorcycle unlawfully." *Rambin*, Slip Op at 7 (emphasis added).

The Supreme Court reversed the Court of Appeals, finding that neither side was entitled to summary disposition. In the Supreme Court's view, the appeal turned upon whether MCL 750.414 is a strict liability offense, or whether there must be evidence of an intent to take the vehicle without authority. After a lengthy discussion, the *Rambin* majority found that "MCL 750.414 is not a strict liability offense." *Rambin*, Slip Op at 14. The Court explained:

There are several indications within the statute that militate toward the existence of the element of *mens rea*. The phrase "without authority" along with the terms "take" and "use" all plainly have expansive meanings. "Authority" in this context refers to the "right to control, command or determine." "Take" means "to get into one's hands or possession by voluntary action." "Use" means "to employ for some purpose." By themselves, these terms all contemplate voluntary and knowing conduct on the part of the accused. For a person to take personal property without the authority of the actual owner, there must be some evidence to support the proposition that the person from whom he or she received the property did not have the right to control or command the property. And the terms "take" and "use" require at the least some voluntary action. Further, if there were no *mens rea* element respecting the taking or using of a vehicle, the statute could punish otherwise innocent conduct. Accordingly, we conclude that MCL 750.414 is not the exceptional statute that imposes strict liability, but a statute that corresponds with the common-law rule that presumes *mens rea* as to each element of the offense. *Rambin*, Slip Op at 15-16.

Because plaintiff should have been allowed to "present evidence ... to establish that he did not violate MCL 750.414," the Court found that, contrary to the Court of Appeals' finding, "an issue of fact remains with regard to the unlawful taking." *Id.* at 17. Although the Court expressed doubts about "plaintiff's claim that he did not know the motorcycle was stolen," *Id.* at 6 n 6, an appellate court cannot make factual findings, *Id.* at 17, and the case was therefore remanded to the trial court to decide whether plaintiff had the requisite mind state to violate MCL 750.414.

CONTACT US

Troy

2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-538-1223

Lansing

6639 Centurion Drive, Ste. 100, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline SE, Ste. 600, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2014 Secrest, Wardle, Lynch, Hampton, Truex and Morley, P.C.

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

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Jane Kent Mills
Michael W. Slater

Editor

Linda Willemsen

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for No-Fault Newslines, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at swwsubscriptions@secrestwardle.com or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowner's Alert – Defense strategies for property owners and managers
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
Standards – A guide to avoiding risks for professionals
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability