

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## Non-Resident Motorcyclist Is Entitled To Michigan PIP Benefits Based On Plain Reading of 3113(c)

By Sarah L. Walburn

On July 18, 2013, the Michigan Court of Appeals examined a question of first impression in *Perkins v Auto-Owners Insurance Company*, \_\_\_ Mich App \_\_\_ (7/18/13) (Docket Nos. 310473, 312674). The issue presented before the Court was whether a non-resident motorcyclist, who is involved in an accident with a motor vehicle in Michigan, is entitled to PIP benefits when the insurer of the motorcycle involved in the accident had not filed a certification pursuant to MCL 500.3163. In order to sell insurance in Michigan an insurer must file and obtain a written certification from the State. Non § 3163 insurers are not permitted to transact business in Michigan. Out of state residents involved in motor vehicle accidents in Michigan can obtain PIP benefits if they are insured with an insurer that has filed a § 3163 certification. However, a non-resident occupying a motor vehicle or motorcycle not registered in Michigan is barred from receiving PIP benefits if he/she is not insured by an insurer who has filed a § 3163 certification.

The facts of this case reveal that Plaintiff James Perkins, a Kentucky resident, was injured while riding his motorcycle in Michigan when he collided with a motor vehicle operated by Sara Kaplan. Plaintiff's motorcycle was registered with the State of Kentucky and insured with Progressive Northern Insurance Company. Plaintiff also owned Kentucky registered motor vehicles which were insured by State Farm (which had filed a 3163 certification). Ms. Kaplan, the operator of the Michigan-registered motor vehicle that struck Plaintiff, was insured with Defendant Auto-Owners. Under the priority rules in the No-Fault Act, Auto-Owners is liable for Plaintiff's PIP benefits unless he is excluded under § 3113(c).

Plaintiff filed suit in Michigan against all three insurers seeking payment of PIP benefits. The Circuit Court granted State Farm's and Progressive Northern's motions for summary disposition and held that Auto-Owners was primarily liable for Plaintiff's PIP benefits. The trial court also awarded attorney fees to Plaintiff under MCL 500.3148. Auto-Owners appealed. Auto-Owner's sole argument against providing PIP benefits to Plaintiff was that the insurer of the motorcycle, i.e., Progressive Northern Insurance Company, had not filed a certification in compliance with MCL 500.3163. Thus, Auto-Owners argued Plaintiff was barred by MCL 500.3113(c) from receiving PIP benefits which states as follows:

The person was not a resident of this state, was an occupant of a motor vehicle or motorcycle not registered in this state, and was not insured by an insurer which has filed a certification in compliance with section 3163.

### SECRET WARDLE NOTES:

In *Perkins*, the Court examined the interplay between MCL 500.3113(c) and MCL 500.3163 when a non-resident motorcyclist is involved and whose motorcycle insurer was not § 3163 certified, but whose motor vehicle insurer was § 3163 certified. The Court held that "nothing in the statute requires that the insurer be the one who provided insurance for the vehicle involved in the accident." Accordingly, a non resident is entitled to PIP benefits if he is a named insured on a policy with an insurer who had filed a § 3163 certification regardless of whether the occupied motor vehicle or motorcycle is insured with a § 3163 insurer.

## CONTINUED...

Clearly, the first two conditions had been met. Plaintiff was a Kentucky resident and the motorcycle he was riding was registered with the State of Kentucky. However, the Court of Appeals disagreed with Auto-Owners regarding the applicability of the third condition of MCL 500.3113(c). In this regard, the Court held that because Plaintiff (rather than his motorcycle) was in fact insured by an insurer that had filed a 3163 certification, (his motor vehicle insurer State Farm) § 3113(c) did not exclude him from receiving PIP benefits. The Court noted, “[n]othing in the statute requires that the insurer be the one who provided insurance for the vehicle involved in the accident.” Accordingly, even though Plaintiff was not operating his State Farm insured motor vehicle at the time of the accident, the fact that he was insured with State Farm and it had filed a § 3163 certification was enough to prevent the exclusion from applying to his claim.

In response to Auto-Owners arguments to the contrary, the Court stated that Plaintiff had paid into the no-fault system through his motor vehicles insured with State Farm. Indeed, had Plaintiff been driving his motor vehicle, he would have been entitled to PIP benefits.

Moreover, as a motorcyclist, Plaintiff was not required to carry PIP insurance. Nevertheless, under the No-Fault Act, motorcyclists are entitled to PIP benefits when injured in an accident involving a motor vehicle.

In short, Plaintiff was not excluded from benefits under MCL 500.3113(c), and the Court of Appeals upheld the Circuit Court’s denial of Auto-Owners’ summary disposition motion.

Additionally, the Court upheld the trial court’s award of attorney fees under § 3148 as Auto-Owners did not present a legitimate question of statutory construction. In this regard, the Court stated that the language of MCL 500.3113(c) was plain and unambiguous and the cases relied upon by Auto-Owners were distinguishable.

In conclusion, a non-resident motorist/motorcyclist will be entitled to PIP benefits if he/she has any auto accident insurance with a § 3163 insurer, regardless of whether the vehicle or motorcycle involved in the accident was insured with a §3163 insurer.

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