

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

08.02.12

Supreme Court Disallows Excess Replacement Services Claims in Third-Party Cases

By Thomas Economy

In *Johnson v. Recca* __ Mich __ (2012), the Michigan Supreme Court was presented with the issue of whether damages for “replacement services” are recoverable as excess economic damages in a third party tort action under the Michigan No-Fault Act. The Court held that because replacement services are not among the categories listed in MCL 500.3135(3)(c), a plaintiff cannot recover them as part of an excess economic damages claim.

In this case, Plaintiff was injured when she was struck by a motor vehicle as she was walking through a gas station parking lot. She filed a third party tort action against Defendant and sought damages for *replacement services* pursuant to § 3135(3)(c). The trial court found that Plaintiff could not recover damages for replacement services under § 3135(3)(c). The Court of Appeals reversed the trial court, finding that replacement services were recoverable as part of the tort claim. Defendant appealed.

The majority opinion by the Michigan Supreme Court began by laying out the framework for its holding by discussing the various statutory sections at issue. The Court explained that, under the No-Fault Automobile Insurance Act, there are four general categories of expenses and losses: survivor’s loss, allowable expenses, work loss, and replacement services. “Allowable expenses,” and “replacement services” are defined as follows in MCL 500.3107(1):

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation. Allowable expenses within personal protection insurance coverage shall not include charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except if the injured person requires special or intensive care, or for funeral and burial expenses in the amount set forth in the policy which shall not be less than \$1,750.00 or more than \$5,000.00.

(c) [Replacement services] Expenses not exceeding \$20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent.

Furthermore, although the No-Fault Act generally abolishes tort liability arising from the ownership, maintenance, or use of a motor vehicle, the Court explained that MCL 500.3135 provides several exceptions to the general rule. One such exception is set forth in MCL 500.3135(3), which provides in relevant part:

SECRET WARDLE NOTES:

Excess replacement service claims are dead.

The big picture: This case is another example of the Michigan Supreme Court re-establishing a textualist/strict constructionist approach to statutory interpretation that had been relaxed in recent years. However, this was another narrow 4-3 decision. The balance of the Court can easily tip in the Fall 2012 elections.

CONTINUED...

“Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by [MCL 500.3101] was in effect is abolished except as to:

* * *

(c) Damages for *allowable expenses, work loss, and survivor’s loss* as defined in [MCL 500.3107 to MCL 500.3110] in excess of the daily, monthly, and 3-year limitations contained in those sections. The party liable for damages is entitled to an exemption reducing his or her liability by the amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.” [Emphasis added.]

The Court held that above language in § 3135(3)(c) clearly and unambiguously does not mention damages for “replacement services.” Rather, only “[d]amages for allowable expenses, work loss, and survivor’s loss” are included in the listed economic losses recoverable under § 3135(3)(c). Therefore, the Court held that in a third-party tort action, damages for replacement services are not recoverable pursuant to § 3135(3)(c), and the Court of Appeals erred by holding otherwise.

The *Johnson* Court applied the general rule of statutory construction that courts must enforce clear and unambiguous statutory provisions as written. Further, the Court cited the traditional legal maxim *expressio unius est exclusion alterius*, “the expression of one thing suggests the exclusion of all others.” The Court rejected the Court of Appeals’ rationale that “replacement services” constitute “merely one category of allowable expenses.” In this regard, the Court reasoned that because replacement services are discussed in § 3107(1)(c) and allowable expenses are contained in § 3107(1)(a), they are separate and distinct categories of PIP benefits under the statute.

The Court also rejected arguments that other sections of the No-Fault Act imply that replacement services should be included among the listed economic losses in § 3135(3)(c), because there is nothing in those sections that suggest that replacement services are a sub category of allowable expenses. Furthermore, the Court rejected public policy and legislative history arguments put forth by Plaintiff for judicial restraint and separation of powers reasons.

CONTACT US

Troy

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

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Thomas J. Azoni
John H. Cowley, Jr.

Editor

Bonny Craft

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 swsubscriptions@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

SECRET
SW
WARDLE

Copyright 2012 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.