SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

2.21.08

"Constructive Ownership" no longer a test For No-Fault benefits; benefits must be paid as long as the vehicle is insured by someone.

By Michael L. Updike

In *Iqbal v Bristol West Insurance Group, 2__ Mich App ___; ___ NW2d ___ (Michigan Court of Appeals No. 275847, rel'd 2/14/08)*, the plaintiff did not personally own a motor vehicle, but had standing permission to use his brother's car. The brother's car was insured by the Auto Club Insurance Association (Auto Club). Plaintiff used the car extensively, albeit apparently not exclusively, for more than 30 days. The plaintiff was involved in a rear-end collision, and sought no fault benefits through a resident relative's Bristol West Insurance Group (Bristol West) policy. Bristol West argued that, as the "constructive owner" of the accident vehicle, the plaintiff was required to have no-fault insurance on it. Since the plaintiff did not have any insurance on the accident vehicle, he was not entitled to no-fault benefits.

Both the trial court and the Court of Appeals disagreed with Bristol West. While the plaintiff might well be considered to have been a "constructive owner" of the accident vehicle, that was not the test for whether or not he should receive no-fault benefits following the accident. The statute, MCL § 500.3113(b), only precludes no-fault benefits to an "owner" when the accident vehicle is uninsured. It was undisputed the accident vehicle was insured, through the brother. The Court of Appeals maintained its holding was consistent with prior law, citing *State Farm Mutual Automobile Insurance Company v Sentry Insurance Company, 91 Mich App 109; 283 NW2d 661 (1979) and Wilson v League General Insurance Company, 195 Mich App 705; 491 NW2d 642 (1992).* The Court of Appeals acknowledged, however, that its decision was "contrary

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Absent a reversal by the Michigan Supreme Court, insurers cannot deny coverage for no-fault benefits as long as the claimant can prove that the vehicle had a no-fault policy in force at the time of the accident. Insurers may have no choice but to make extensive inquiries as to where vehicles it insures are garaged, who has access and so forth in order to evaluate the risk and set appropriate premiums. If the vehicle is not insured, the "constructive ownership" argument would still preclude coverage via a policy issued to a family member or resident relative.

to a couple of unpublished decisions" of the Court of Appeals, but noted that it was not obligated to follow the unpublished decisions and did not find them persuasive in any event.

What may have been an unspoken consideration in Iqbal was the fact that the plaintiff was rear-ended by another vehicle while stopped at a red light, waiting for a fire truck to pass. Also, there was no suggestion in the record that the plaintiff had a bad driving record or otherwise would not qualify for insurance. By contrast, Bristol West seemed to take the position that, where there was both a titled owner and a "constructive owner" of the same motor vehicle, both should obtain separate no-fault insurance on the vehicle.

The Iqbal decision has been designated for formal publication in the *Michigan Appeals Reports and the North West Reporter 2d* and was authored by Judge William Murphy, joined by Judges E. Thomas Fitzgerald and Steven Borrello. Unless reviewed and reversed by the Michigan Supreme Court, *Iqbal* will now be controlling precedent in Michigan on the issue of whether the "constructive owner" needs to procure a separate policy of insurance on his or her vehicle. It will have to be followed by all trial courts and by other hearing panels of the Court of Appeals. As long as a motor vehicle involved in an accident vehicle has a no-fault policy in force, the "constructive owner" of the vehicle will be entitled to no-fault benefits, even if he or she did not take out the policy.

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We welcome your questions and comments.

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