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Court Rules Rear-End Collision Statute Applicable Even Where Defendant's Motor Vehicle was not Covered by No-Fault Insurance

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The Michigan Court of Appeals recently held that despite driving an uninsured motor vehicle, an operator/owner is entitled to have the jury instructed on the rear-end collision statute (MCL 257.402).

In *Estate of Groulx v Bard*, Docket No. 320194, 2015 WL 1880252 (Mich. Ct. App. Apr. 23, 2015), the plaintiff's decedent was killed in a motor vehicle accident when he struck the rear of a logging machine, known as a feller buncher. A feller buncher is considered a "motor vehicle" under the Michigan No-Fault Act, as it is operated or designed for operation on a public highway by power other than muscular power and has more than two wheels. MCL 500.3101(h)

The accident occurred at approximately 6:10 a.m., and at the time, the roadway was dark with patchy fog. The plaintiff argued that because the feller buncher did not have reflectors, taillights or a reflective triangle, but had only white lights at the top of the rear, it was not visible from a reasonable distance, causing the decedent to strike it and suffer death.

The case proceeded to trial, with the jury awarding the plaintiff approximately $2.8 million. The defendants appealed, making several arguments.

The defendants first argued that the trial court erred in granting the plaintiff's motion for a directed verdict on the issue of the decedent's comparative negligence. The Michigan Court of Appeals agreed, reasoning that it was a question of fact for the jury to decide whether the decedent was comparatively negligent because there was witness testimony that they were able to observe the feller buncher. However, there was also testimony that the decedent was excessively speeding and that the feller buncher was not readily visible without additional lights or circumstances to alert drivers.

The defendants next argued that the trial court erred when it refused to instruct the jury on the rear-end collision statute (MCL 257.402), which provides that a driver who rear ends a motor vehicle "shall be deemed *prima facie* guilty of negligence." This presumption of negligence can be rebutted by evidence that would excuse the driver who did the rear-ending. The trial court ruled that MCL 257.402 did not apply because the feller buncher was not lawfully standing on the road due to a lack of proper lights and reflectors. The trial court record, however, demonstrated that the feller buncher was not standing

on the road because it was moving, and that it was a question of fact for the jury. Accordingly, the appellate court agreed with the defendants.

The defendants also argued that the trial court erred by barring the defense expert from testifying on conspicuity perception and reaction time. The defendants' expert parked a feller buncher on a dirt road and conducted a field experiment to determine visibility of the feller buncher. The defendants' expert concluded that the feller buncher could be seen at a distance of 250 to 300 feet. The trial court disallowed this testimony, reasoning that the recreation was not sufficiently similar to the circumstances under which the accident occurred, and was, therefore, not based on reliable principles and that the methodology was flawed. The appellate court agreed with the trial court, citing MRE 702 and MCL 600.2955, which set out the requirements for the admission of expert testimony.

And finally, the defendants argued that the trial court erred in ruling that the no-fault act did not bar the plaintiff's claims for economic damages. The appellate court disagreed, holding that because the partial immunity from tort liability established by MCL 500.3135(3) applies only to a motor vehicle with respect to which the security required by MCL 500.3101 was in effect at the time of the motor vehicle accident, and because the feller buncher was not covered by a no-fault policy, the defendants were not entitled to the partial immunity established by MCL 500.3135(3).