

Non-Resident, No-Fault Tort Recovery, Surface Waters Coverage Update

August 1, 2024

Non-Residents and No-Fault Tort Recovery – Michigan

Goings v. Giacomantonio-Snow

No. 366074, --- N.E.3d ---, 2024 WL 3466067 (Mich. Ct. App. July 18, 2024)

The Michigan Court of Appeals overturned a trial court decision and held that a non-resident driver or vehicle registrant's failure to maintain Michigan No-Fault insurance if they drive in Michigan for more than 30 days does not bar them from recovering non-economic damages under MCL 500.3135(2)(c).

On Sept. 22, 2021, John Goings Sr. (Goings) was rear ended by Bobbie Jean Giacomantonio-Snow (Giacomantonio-Snow) and sustained bodily injuries. Goings' vehicle was registered in the state of Ohio and insured by an Ohio auto policy. After the accident, Goings filed suit against Giacomantonio-Snow seeking non-economic tort damages.

During discovery, Goings provided conflicting evidence about his residency because some evidence demonstrated that he lived in Toledo, Ohio while other evidence indicated he worked and spent numerous nights in Michigan.

As such, Giacomantonio-Snow moved for summary disposition based on MCL 500.3135(2)(c), which states that “[d]amages must not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by section 3101(1) at the time the injury occurred.” MCL 500.3101(1) provides that “[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance and property protection insurance as required under this chapter, and residual liability insurance.”

Giacomantonio-Snow asserted that Goings was either an uninsured Michigan resident or operated his vehicle in Michigan for more than 30 days in a year without maintaining Michigan No-Fault insurance in violation of MCL 500.3101(1).

The trial court granted Giacomantonio-Snow's motion on the basis that Goings was barred from recovering non-economic damages under MCL 500.3135(2)(c) because he failed to comply with MCL 500.3102(1), which states that a nonresident owner or motor vehicle registrant shall not operate their

motor vehicle in the state for more than an aggregate of 30 days in a year unless they maintain Michigan No-Fault insurance.

The appellate court found the trial court's decision to be erroneous, reasoning that the lower court's interpretation that a violation of MCL 500.3102(1) presumptively prohibits recovery of non-economic tort damages under MCL 500.3135(C)(2) was contrary to principles of statutory interpretation and altered the legislative intent. The appellate court ultimately declined to read language into MCL 500.3135(2)(c) or add provisions to same and permitted the non-resident driver to seek recovery of non-economic damages.

By: Shantinique Brooks

Surface Waters – Massachusetts

Zurich Am. Ins. Co. v. Med. Properties Tr., Inc.

No. SJC-13535, --- N.E.3d ---, 2024 WL 3504060 (Mass. July 23, 2024)

On a certified question from the U.S. Court of Appeals for the First Circuit, the Massachusetts Supreme Judicial Court held that the term “surface waters” as used in the subject insurance policies was ambiguous in the context of whether the term included rainwater that accumulated on a hospital's parapet and courtyard roofs.

This first-party property insurance matter arose when a severe thunderstorm passed through Norwood Massachusetts on June 28, 2020. The storm significantly damaged Norwood Hospital Facility (Norwood), a building owned by Medical Properties Trust, Inc. (MPT) and leased to Steward Health Care System, LLC (Steward). Heavy rains and strong winds caused heavy flooding in the basement of Norwood's two buildings. Rainwater also accumulated on Norwood's roofs and second-floor courtyard which eventually entered Norwood's upper floors causing damage.

MPT sought coverage for the resulting storm damage from its property insurer, Zurich American Insurance Company (Zurich). Steward also sought coverage from its insurer, American Guarantee and Liability Insurance Company (AGLIC). The Zurich and AGLIC policies provided limited coverage for damage caused by “flood” as that term is defined by the policies. Both policies define “flood” in pertinent part as “[a] general and temporary condition of partial or complete inundation of normally dry land or structure(s) caused by ... [t]he unusual and rapid accumulation or runoff of surface waters[.]” Because the parties disagreed on whether the water that accumulated on the roofs and infiltrated into Norwood was “surface waters” within the meaning of the policies' definition of flood and therefore subject to the sub-limits for flood, litigation ensued to resolve this issue.

Both insurers filed declaratory judgment actions in the U.S. District Court for the District of Massachusetts. The district court, in ruling in favor of the insurers on the parties' cross motions for partial summary judgment, determined that the term "surface waters" included the rainwater that accumulated on Norwood's parapet and courtyard roof. The district court judge, however, recognized that this legal issue involved a controlling question of law for which there was substantial ground for difference of opinion and allowed an interlocutory appeal under 28 U.S.C. § 1292(b).

MPT and Steward appealed to the U.S. First Circuit Court of Appeals. The appellate court then certified the following question to the Supreme Judicial Court of Massachusetts:

Whether rainwater that lands and accumulates on either (i) a building's second-floor outdoor rooftop courtyard or (ii) a building's parapet roof and that subsequently inundates the interior of the building unambiguously constitutes "surface waters" under Massachusetts law for the purposes of the insurance policies at issue in this case?

The Supreme Judicial Court of Massachusetts held that the term "surface waters" and thus the definition of "flood" in the subject insurance policies was ambiguous in regard to rainwater accumulating on roofs. Because the term was ambiguous, the court resolved the ambiguity in favor of the insureds, MPT and Steward, and concluded that the damage from rainwater accumulating on the rooftop courtyard and parapet roofs was not subject to the policies' flood sub-limits.

By: Amy Diviney