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Supreme Court Holds PIP Benefits not available to family member who witnesses motor vehicle fatality

December 12, 2012

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The Michigan Supreme Court recently held that personal protection insurance benefits (PIP) are not available under Michigan's No-Fault Act, MCL 500.3101, *et seq*, to a plaintiff who witnessed her son's fatal motor vehicle accident and suffered psychological injuries as a result.

The Supreme Court's decision reversed the Michigan Court of Appeals' decision in *Boertmann v Cincinnati Insurance Company,* 291 Mich App 683 (2011). The plaintiff mother in *Boertmann* was diagnosed with post-traumatic stress and depressive disorders after witnessing her son's fatal motor vehicle accident, and she sought wage loss, replacement services and medical expenses under a no-fault insurance policy issued by the defendant. The Michigan Court of Appeals held that her injuries arose out of the "use of a motor vehicle as a motor vehicle" and that, therefore, she was entitled to PIP benefits pursuant to MCL 500.3105(1).

However, the Supreme Court noted that under long-standing precedent, no-fault coverage under MCL 500.3105(1) is available only where "the causal connection between the injury and the use of a motor vehicle as a motor vehicle is more than incidental, fortuitous, or 'but for.'" The court held that the plaintiff was not involved in any manner in the accident which resulted in her son's death; rather, she was "simply a bystander" who witnessed the accident. Accordingly, the court concluded that she was not entitled to PIP benefits.

Under similar facts, the appellate court had ruled in *Keller v Citizens Ins Co,* 199 Mich App 714 (1992), that the plaintiff was not entitled to PIP benefits. In that case, the plaintiff's young son was struck and killed as he attempted to cross a street near his home. The plaintiff was inside her home when she heard the screech of tires and immediately went outside, where she observed her son's body lying near the roadway. The court held that the plaintiff's injuries had only an incidental connection with the use of a motor vehicle and that, accordingly, her injuries were outside the scope of coverage intended by MCL 500.3105.

In *Boertmann*, the appellate court distinguished the underlying facts from the facts in *Keller*, in that the plaintiff in *Boertmann* had witnessed the accident and the plaintiff in *Keller* had not. The court relied on that distinction to support its decision that the plaintiff had demonstrated a sufficient causal connection between the accident and her injuries. As a result of the appellate decision in *Boertmann,* trial courts were precluded from granting summary disposition to insurers where a plaintiff suffered psychological injuries after witnessing an accident.

However, the Supreme Court's reversal of *Boertmann* now confirms the long-standing rule under Michigan law that simply witnessing an accident or its aftermath will generally be an insufficient basis to establish entitlement to PIP benefits under MCL 500.3101.

If you have questions regarding the Michigan Supreme Court's ruling or Michigan's No-Fault Act, please contact the author of this Rapid Report or any member of Plunkett Cooney's Trucking and Transportation Practice Group.