



Michigan Court of Appeals Interprets No-Fault Act's "Unlawfully Taken Vehicle" Exclusion

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On February 10, 2009, the Michigan Court of Appeals published an opinion holding that a driver was not entitled to no-fault benefits because she unlawfully took a motor vehicle without a reasonable belief that she was entitled to both take and use it. *Amerisure Ins Co v Plumb*, Docket No. 276384.

Claimant Plumb left a bar with two unidentified men and was injured in an accident. She alleged that one of the men handed her the keys to a Jeep and asked her to drive. She was under the influence of drugs and alcohol, and her driver's license was suspended. In fact, the Jeep belonged to a different bar patron, and he did not give Plumb permission to drive his vehicle. A first-party lawsuit ensued. The trial court granted summary disposition to Amerisure, holding that Plumb could not have reasonably believed that she was entitled to take and use the vehicle.

The Court of Appeals agreed with the trial court that the vehicle was taken unlawfully but held that Plumb could still recover benefits if she could show that she had a reasonable belief that she was entitled to (1) *take* the vehicle and (2) *use* the vehicle. There was a question of fact as to whether Plumb reasonably believed she could *take* the vehicle because she was allegedly handed the keys to the Jeep and given permission to drive it. But the Court held that "as a matter of law one cannot reasonably believe that she is entitled to use a vehicle when she knows that she is unable to legally operate" it. In this case, Plumb could not have reasonably believed that she was entitled to *use* the vehicle because she was intoxicated and her driver's license was suspended. The Court held that summary disposition was properly granted in favor of Amerisure.

This case is noteworthy because of its analysis of "reasonable belief" and its separate analyses of "take" and "use" in the context of a first-party coverage dispute.

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