



Foster Swift Recovers \$2.4 Million for Hospital in No-Fault Case

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On June 8, 2010, the Michigan Court of Appeals handed down a published opinion reversing the trial court's denial of summary disposition and remanding the case for entry of judgment in favor of Plaintiff Henry Ford Health System in a case involving \$2.4 million in medical services. *Henry Ford Health System v Esurance Insurance Company*. (No. 288633).

In 2006, Henry Ford Hospital provided medical services to Travion Hamilton for severe injuries that he sustained when a stolen Jeep Cherokee in which he was a passenger struck a utility pole. Hamilton's girlfriend had borrowed a 1999 Jeep Cherokee from an acquaintance knowing that it had been stolen. She picked up Hamilton and drove around with him for 3-5 hours. Hamilton had no part in the initial taking of the Jeep and never drove it himself.

Henry Ford sued Esurance, which insured the Jeep, for first party medical expenses. Esurance denied payment arguing that Hamilton, and thus Henry Ford Hospital, was not entitled to no-fault benefits because Hamilton was using the Jeep without a reasonable belief that he had been entitled to take and use it. MCL 500.3113(a). The Trial Court denied Henry Ford's Motion for Summary Disposition, and the case went to trial where the jury found for Defendant.

The Court of Appeals reversed, holding "that the trial court erred in denying plaintiff's motion for summary disposition because there was an absolute dearth of evidence that Hamilton was using a motor vehicle that 'he . . . had taken unlawfully.'" The Court explained that the taking of the Jeep was complete by the time Hamilton came into the picture, and thus while Hamilton was "using" the Jeep (as a passenger), he did not "take" it. In order to trigger the statutory exception to coverage under MCL 500.3113(a), a person must both take and use the vehicle.

This case is important because the Court of Appeals clarified that a person is not excluded from No Fault PIP benefits merely for being a passenger in a stolen vehicle.

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