

## COURT RULES 'EMPLOYER'S' INSURER MUST PAY PIP BENEFITS WHEN OWNER-OPERATOR INJURED WHILE OPERATING LEASED TRUCK

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In *Dulic v Progressive Michigan Ins. Co.*, 2007 WL 490984 ( Mich. App. Feb. 15, 2007), the Michigan Court of Appeals, in a two-to-one decision, upheld the trial court's ruling that a trucking company's no-fault insurer was liable for payment of personal protection insurance benefits (PIP) to a self-employed driver under MCL 500.3114(3).

MCL 500.3114(3) provides that an employee who is injured while occupying a motor vehicle, owned or registered by the employer, shall receive PIP benefits from the insurer of the furnished vehicle.

The plaintiff in *Dulic* owned the truck and leased it to the trucking company. The trucking company was issued an insurance policy covering the truck. The insurer argued that it was not liable to pay PIP benefits because the plaintiff was an independent contractor and not an employee of the trucking company.

The appellate court disagreed and cited *Celina Mut. Ins. Co. v Lakes States Ins. Co.*, 452 Mich. 84 (1996), which held that it was consistent with the purposes of the no-fault statute to apply MCL 500.3114(3) in the case of injuries to a self-employed person. The court then held that it was inherent under the result and reasoning of *Celina*, that a self-employed person operating a motor vehicle owned by that self-employed person in the course of his or her self-employment is both an employee and an employer for purposes of MCL 500.3114(3). The court then held that the plaintiff owned the vehicle for purposes of the No-Fault Act.

Therefore, the court stated, that where an employee is injured while occupying a motor vehicle owned by the employer, the employee is to receive PIP benefits from the insurer of the furnished vehicle. The court, therefore, held that as the insurer of the vehicle, the defendant-insurer, was liable to pay the PIP benefits.

The insurer appealed to the Michigan Supreme Court, but leave to appeal was denied.

Although *Dulic* is unpublished, it will be persuasive authority for trial judges faced with this priority issue. Prior to *Dulic*, the priority analysis for trucker PIP claims usually involved determining whether the trucker was an "employee" of the company to whom he was leased by applying the economic realities test. The *Dulic* court rejected that analysis by finding that a trucker, as a

self-employed person, is both an employer and an employee.

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