

MICHIGAN SUPREME COURT



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Big Rapids High School to host Michigan Supreme Court on October 23 Area high school, college students to meet Supreme Court justices, hear arguments in motorcycle injury case as part of “Court Community Connections” program

LANSING, MI, October 18, 2013 – A stolen motorcycle, and the unlicensed driver who was injured while riding it, are at the center of a case the Michigan Supreme Court will hear on October 23 at Big Rapids High School.

At issue is whether the plaintiff in *Rambin v Allstate Insurance Company* “unlawfully” took the motorcycle by borrowing it from a man who was not the true owner. A person who takes a vehicle “unlawfully” cannot recover no-fault benefits. But the Michigan Court of Appeals held that the plaintiff’s use of the motorcycle was not “unlawful” because he did not know that the motorcycle was stolen and had not violated the Michigan Penal Code.

While the Supreme Court normally hears oral argument at the Hall of Justice in Lansing, the Court goes on the road to different Michigan communities twice a year as part of its “Court Community Connections” program. “Court Community Connections” is aimed principally at high school students to help them have a better understanding of Michigan’s judicial branch.

Students and teachers will study the case before the oral argument. After discussing the case with legal professionals, students from Big Rapids, Chippewa Hills, Ewart, Marion, Pine River, Morley Stanwood, Crossroads Charter Academy, and Reed City high schools and Ferris State University will have front-row seats for the 12:30 p.m. session in the Big Rapids High School auditorium. Following oral argument, students will be debriefed by the attorneys in the case.

Please note: The summary that follows is a brief account of this case and may not reflect the way in which some or all of the Court’s seven Justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. For further details about the case, please contact the attorneys. Briefs are available on the Supreme Court’s website at <http://courts.mi.gov/Courts/MichiganSupremeCourt/oral-arguments/2013-2014/Pages/146256.aspx>.

RAMBIN v ALLSTATE INSURANCE COMPANY, et al. (case no. 146256)

Court of Appeals case no. 305422

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Attorney for defendant Allstate Insurance Company: Daniel S. Saylor/(313) 446-5520

Trial Court: Wayne County Circuit Court

Issue: The plaintiff in this case was injured while riding a motorcycle borrowed from a friend; the friend said that he owned the motorcycle, but in fact it had been stolen from its rightful owner. At the time, the plaintiff's Tennessee driver's license had been suspended, and he had not obtained a valid Michigan license. Plaintiff sued for no-fault benefits from the defendant insurance companies, but a trial court dismissed his claims, ruling that his lawsuit was barred by MCL 500.3113(a). That statute prohibits recovery under the no-fault act by a person who has taken the vehicle "unlawfully." But the Court of Appeals reversed, ruling that the plaintiff's use of the motorcycle was not "unlawful" because he did not know that the motorcycle was stolen and had not violated the Michigan Penal Code. Did the plaintiff "unlawfully" take the motorcycle within the meaning of MCL 500.3113(a)? If so, did the Court of Appeals err in concluding that the plaintiff lacked, as a matter of law, knowledge that the true owner had not authorized his use of the motorcycle?

Summary: Scott Hertzog's motorcycle was stolen on August 4, 2009. On August 22, 2009, Lejuan Rambin borrowed a motorcycle from Andre Smith. Although the motorcycle was Hertzog's, Smith told Rambin that he, Smith, owned the motorcycle. That evening, on his way back to Smith's house to return the motorcycle, Rambin collided with an uninsured vehicle and was injured. At the time, Rambin did not have a valid Michigan driver's license; his Tennessee driver's license had been suspended. Rambin later acknowledged in a deposition that he knew at the time of the accident that he did not have a valid license to drive a motorcycle.

Rambin filed an action for recovery of no-fault benefits, naming as defendants Allstate Insurance Company, which insured a motor vehicle Hertzog owned, and Titan Insurance Company, which was assigned the claim by the Assigned Claims Facility pursuant to MCL 500.3172.2. Both insurers moved for summary disposition, asking the trial court to dismiss Rambin's claims against them. The trial court agreed that Rambin's claim was barred by MCL 500.3113(a). That statute provides that a person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident:

- (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.

Rambin appealed and in a published decision, the Court of Appeals reversed the trial court, reinstating Rambin's claims and sending the case back to the trial court for further proceedings. Rambin did not take the motorcycle "unlawfully" within the meaning of MCL 500.3113(a), the Court of Appeals stated.

"In this case, the first level of inquiry involves whether a claimant who had taken possession of a vehicle with the mistaken belief that the owner had given consent (when in fact the person who had given consent was not the owner and was not authorized to give consent) 'had taken' the vehicle 'unlawfully,' within the meaning of MCL 500.3113(a)," the appellate court said. The court added that Michigan law on the issue was "hopelessly muddled and is in desperate need of clarity."

The no-fault act does not define "taken unlawfully," so Michigan courts "have been left to discern whether the term means a taking that is (a) in violation of a criminal statute (and, if so,

which ones), (b) without authorization of law, (c) without authorization of any person, (d) without authorization of the vehicle's owner, or (e) something else," the Court of Appeals observed.

The Court of Appeals looked to the Michigan Supreme Court's decision in *Spectrum Health Hospitals v Farm Bureau Mutual Insurance Co. of Mich*, 492 Mich 503 (2012). In *Spectrum Health*, the Supreme Court held that "any person who takes a vehicle contrary to a provision of the Michigan Penal Code [MCL 750.1 *et seq.*] . . . has taken the vehicle unlawfully for purposes of MCL 500.3113(a)." Further, the *Spectrum Health* opinion focuses on whether the *driver* violated the Penal Code, the Court of Appeals reasoned.

In this case, Rambin borrowed the motorcycle without knowing that it had been stolen from Hertzog and without any "unlawful intent," the appellate court observed. Because Rambin did not violate the Penal Code in borrowing the motorcycle, MCL 500.3113(a) does not bar his claims, the panel said.

The court added, "We note that, in and of itself, our finding that plaintiff should not be *denied* PIP benefits under the MCL 500.3113(a) exclusion is not dispositive of whether plaintiff is *entitled* to PIP benefits, or from whom. Those issues remain to be addressed in the trial court. Accordingly, we remand for further proceedings consistent with this opinion."

Allstate and Titan appealed to the Michigan Supreme Court; in an order dated May 1, 2013, the Supreme Court ordered oral argument to be scheduled on whether to grant the application or take other action. The Court directed, "the parties shall address whether the plaintiff took the motorcycle on which he was injured 'unlawfully' within the meaning of MCL 500.3113(a), and specifically, whether 'taken unlawfully' under MCL 500.3113(a) requires the 'person . . . using [the] motor vehicle or motorcycle' to know that such use has not been authorized by the vehicle or motorcycle owner, see MCL 750.414; *People v Laur*, 128 Mich App 453 (1983), and, if so, whether the Court of Appeals erred in concluding that plaintiff lacked such knowledge as a matter of law given the circumstantial evidence presented in this case."

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