



Volume XXI, No. 35
December 18, 2009

FROM THE LAW OFFICES OF GARAN LUCOW MILLER, P.C.

LAW FAX

A Publication for Insurance Providers and Adjusters

www.garanlucow.com

Garan Lucow Miller, P.C. 1111 West Long Lake Road, Suite 300 Troy, Michigan 48098 248.641.7600

From the Co-Editors
James L. Borin & Simeon R. Orłowski

COURT DISCUSSES OWNERSHIP UNDER 3101(2)(h)(i)

CO-CONTRIBUTOR - C. DAVID MILLER¹

In *Spectrum Health v Titan*, an unpublished decision from the Court of Appeals released October 20, 2009, the Court addresses the issue of what constitutes ownership of a vehicle under MCL 500.3101(2)(h)(i) in order to determine whether or not a person is entitled to no-fault benefits under MCL 500.3113(b).

Kevin Zoerman and healthcare providers of Kevin Zoerman sought to recover no-fault benefits against Titan Insurance Company which had been assigned the claim by the Assigned Claims Facility. Titan Insurance Company claimed that Mr. Zoerman was not entitled to no-fault benefits when driving his wife's uninsured vehicle. Titan claimed that he was an owner of the vehicle by virtue of him having use of the vehicle for a period greater than 30 days. As an owner, he had a duty to have the vehicle insured and since it was not insured, he was precluded from no-fault benefits pursuant to MCL 500.3113(b).

¹Mr. Miller is a Partner in the Firm's Detroit Office and can be reached at (313)446-1530 or cmiller@garanlucow.com

GARAN LUCOW MILLER, P.C.

ANN ARBOR • DETROIT • GRAND BLANC • GRAND RAPIDS • LANSING • MARQUETTE • PORT HURON • TRAVERSE CITY • TROY

MCL 500.3101(2)(h)(i) defines "owner" as:

A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days...

The Court of Appeals, quoting *Twichel v MIC General Insurance Corporation*, noted that the focus is to be on the nature of the person's right to use the vehicle. With that concept, the Court of Appeals looked to see how Kevin and his wife allowed for use of the car. There was no evidence that Mr. Zoerman had exclusive or even regular use of the vehicle. Evidence indicated that Mr. Zoerman used the vehicle only sporadically during the 14 months that his wife owned the vehicle used the vehicle. Mr. Zoerman did not have the right to use the vehicle whenever he wanted. His wife had the only set of keys and he had to ask permission from his wife to use the vehicle. There were occasions when his wife did not allow him to use the vehicle when he asked. He had to obtain the keys from his wife in order to use the vehicle. Ms. Zoerman purchased the vehicle without his knowledge. His wife had the responsibility for maintenance of the vehicle. Taking these facts into account, the Court of Appeals determined that he did not have ownership of the vehicle.

Garan Lucow Miller, P.C. is pleased to announce

that it is opening an office in Merrillville, Indiana.

Garan Lucow Miller will have the capability of handling all your claims needs in Indiana and Illinois, effective January 1, 2010.

A formal announcement will follow shortly.

For further information, please contact David N. Campos at 1.800.494.6312

Our Indiana office location is:

**Garan Lucow Miller, P.C.
Barrister Court
9211 Broadway
Merrillville, Indiana 46410
Phone: 219.756.7901
Fax: 219.756.7902
www.garanlucow.com**

Gregory M. Bokota, Jennifer L. McCloskey, and David A. Wilson

have joined the firm as Shareholders in our Indiana office.

GARAN LUCOW MILLER, P.C.

ANN ARBOR • DETROIT • GRAND BLANC • GRAND RAPIDS • LANSING • MARQUETTE • PORT HURON • TRAVERSE CITY • TROY

Gregory M. Bokota was founding partner at Bokota Wilson McCloskey & Long, P.C. In 1985, Mr. Bokota earned his B.A. from the University of Chicago with honors, and in 1991, he received his J.D. from Indiana University School of Law. Mr. Bokota concentrates his practice in the areas of insurance defense litigation and appellate law. Mr. Bokota is licensed in the State of Indiana and State of Illinois.

Jennifer L. McCloskey was founding partner at Bokota Wilson McCloskey & Long, P.C. In 1992, Ms. McCloskey earned her B.A. from Hillsdale College, and in 1995, she received a J.D. from Valparaiso University School of Law. Ms. McCloskey concentrates her areas of practice in the field of insurance defense, criminal law and premises liability.

David A. Wilson was founding partner at Bokota Wilson McCloskey & Long, P.C. In 1990, Mr. Wilson earned his B.A. from University of Central Florida, and in 1996, he received a J.D. from Valparaiso University School of Law. Mr. Wilson concentrates his areas of practice in the field of insurance defense litigation and trucking defense. Mr. Wilson is licensed in the State of Indiana and State of Illinois.