PROPERTY PROTECTION INSURANCE (PPI)

I. OVERVIEW

MCL 500.3021-3127 contain the property protection sections of the Michigan Automobile No Fault Insurance Act. These sections primarily benefit third party property owners by imposing strict liability for property damage on the insurers of vehicle owners or drivers. In most motor vehicle accidents, the vehicle owners and operators can only recover for their damaged vehicle and personal property if they have purchased optional collision coverage, or unless the vehicle was parked. Vehicles are excluded unless they are parked in a manner as not to cause unreasonable risk of the damage which occurred. MCL 500.3123(1)(a).

MCL 500.3009:

(1) An automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and subject to that limit for 1 person, to a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and to a limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident.

(2) If authorized by the insured, automobile liability or motor vehicle liability coverage may be excluded when a vehicle is operated by a named person. Such exclusion shall not be valid unless the following notice is on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance:

Warning—when a named excluded person operates a vehicle all liability coverage is void—no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

(3) If an insurer deletes coverages from an automobile insurance policy pursuant to section 3101, the insurer shall send documentary evidence of the deletion to the insured.

II. PROPERTY PROTECTION BENEFITS
(1) Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125 and 3127. However, accidental damage to tangible property does not include accidental damage to tangible property, other than the insured motor vehicle, that occurs within the course of a business of repairing, servicing, or otherwise maintaining motor vehicle.

(2) Property protection insurance benefits are due under the conditions stated in this chapter without regard to fault.

(3) Damage to tangible property consists of physical injury to or destruction of the property and loss of use of the property so injured or destroyed.

(4) Damage to tangible property is accidental, as to a person claiming property protection insurance benefits, unless it is suffered or caused intentionally by the claimant. Even though a person knows that damage to tangible property is substantially certain to be caused by his act or omission, he does not cause or suffer such damage intentionally if he acts or refrains from acting for the purpose of averting injury to any person, including himself, or for the purpose of averting damage to tangible property.

(5) Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, where applicable, the value of loss of use. However, property protection insurance benefits paid under 1 policy for damage to all tangible property arising from 1 accident shall not exceed $1,000,000.00.

The damage to the tangible property must “arise out of” the ownership, operation, maintenance, use of a motor vehicle as a motor vehicle. This standard has the same meaning as it does in other sections of the No Fault Act, i.e. there must be more than an incidental or fortuitous connection in between the accident and the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

Arising Out of - Loading and Unloading

In BASF Wyandotte v Transport Indemnity Co., 523 F. Supp. 515 (ED Mich 1981), a tanker truck was unloading chemicals when a hose ruptured and caused to spill resulting in significant property damage. The Defendant argued that loading and unloading did not constitute the use of a motor vehicle as a motor vehicle within the meaning of MCL 500.3121(1) and that the phrase “arising out of” referred to proximate causation. The federal court, interpreting Michigan law, rejected both arguments, holding that the use of a motor vehicle includes loading and unloading. The Michigan Court of Appeals disagreed with the Federal District Court’s ruling in a subsequent
case, *Ford Motor Co. v Insurance Co. of North America*, 157 Mich App 692, 403 N.W. 2d 200 (1987). In that case, a catalyst had been unloaded from a tank truck into an incorrect storage tank. An explosion occurred as a result of a chemical reaction approximately one-half hour earlier. Ford sought property protection benefits from the truck’s insurer and argued that the use of a motor vehicle included loading and unloading. The Court of Appeals disagreed with Ford, but noted that even if “use” included loading and unloading, the process of unloading had been completed long before the explosion occurred. The property damage did not arise out of the use of a motor vehicle as a motor vehicle.

**Environmental Contamination**

In *Dept. of Transp. v Initial Transp. Inc.*, 276 Mich App 318, 740 N.W. 2d 720 (2007), rev’d, 481 Mich 862, 748 N.W. 2d 239 (2008), Plaintiff suffered $3.5 million on property damages after defendant’s semi-truck struck a cement barrier on an entrance ramp to a highway and the attached cargo trailer of gasoline exploded when it fell to the roadway below. MCL 3121(5) creates a $1 million cap on recovery of property damage. This case also involved the Motor Carrier Safety Act (MCSA) which required minimum insurance coverage of $1 million to $5 million, depending on the type of hazardous material being transported. The court held that the MCSA did not create an exception to the $1 million cap on property damages.

**Garage Keepers Liability Act**

The Garage Keepers Liability Act establishes the rebuttable presumption that damage to vehicles in a garage keepers control and possession is due to the garage keepers negligence. Prior to a 1993 amendment to the Michigan No-Fault Act, a frequent issue was whether the no-fault act or the Garage Keepers Liability Act controlled when property damage occurred in a commercial garage. The No-Fault Act was amended in 1993 to add the second sentence to MCL 500.3121(1) providing that no-fault property protection coverage for accidental damage to tangible property that occurs during the course of the business or repairing or servicing motor vehicles provides coverage for the insured vehicle only. In the *Universal Underwriters Insurance Group v Auto-Club Insurance Association*, 256 Mich App 541, 666 N.W. 2d 294 (2003), the Court found that the no-fault insurer was not responsible for providing coverage for property damage to the dealership when a faulty wire in a vehicle caused it to catch fire, resulting in property damage to the dealership. The parties agreed that the wire problem was unrelated to the maintenance work. The Court found that the statute was unambiguous and did not require a causal connection between the maintenance work and the property damage. In another case involving a vehicle repair business that was operated out of an individual’s home garage, the Court of Appeals decided a homeowner’s insurer was liable for accidental damage to a home. *Allied Property & Casualty Ins Co v Pioneer State Mutual Ins Co*, 272 Mich App 444, 726 N.W. 2d 83 (2006). In *Auto-Club Ins Assoc v Novi Car Wash*, 273 Mich App 315, 732 N.W. 2d 544 (2006), Michigan Court of Appeals agreed that the insurer would not be responsible for property protection insurance benefits when the insured’s vehicle was damaged while going through a car wash. The exclusions applied and Auto-Club could be reimbursed for the damage that was claimed if it was able to establish that the damage was caused by the negligent actions of Novi Car Wash.
III. PROPERTY DAMAGE, EXCLUSIONS FROM COVERAGE

MCL 500.3123

(1) Damage to the following kinds of property is excluded from property protection insurance benefits:

(a) Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred.

(b) Property owned by a person named in a property protection insurance policy, the persons’ spouse or a relative of either domiciled in the same household, if the person named, the persons’ spouse or the relative was the owner, registrant, or operator of a vehicle involved in the motor vehicle accident out of which the property damage arose.

(2) Property protection insurance benefits are not payable for property damage arising from motor vehicle accidents occurring outside the state.

(3) Property protection insurance benefits are not payable for property damage to utility transmission lines, wires, or cables arising from the failure of a municipality, utility company, or cable television company to comply with the requirements of section 16 of Act No. 368 of the Public Acts of 1925, being section 247.186 of the Michigan Compiled Laws.

Four Exceptions to the abolishment of tort liability:

1. Mini tort provision, MCL 500.3135(3)(e), which allows small claims suits of up to $1,000 after October 1, 2012 for property damage to motor vehicles not covered by insurance.

2. Damage or harm to property that was caused intentionally, MCL 500.3135(3)(a).

3. The tortfeasor failed to have the required insurance, MCL 500.3135(3)(4).

4. Damage to vehicles that are not unreasonably parked. MCL 500.3123(1)(a).

What constitutes a vehicle?

This section excludes damage to vehicle and their contents unless optional collision coverage has been purchased. Therefore, first party insured moving vehicles that are involved in an accident
may not recover for damage to their vehicles, nor personal property. It is important to note that this statute excludes “vehicles” and their contents, and not “motor vehicles” as merely defined in MCL 500.3101(2)(e).

MCL 500.3123(1)(b) denies property damage benefits for property belonging to the named insured, as well as property of the named insured’s spouse or resident relatives if any of those persons was the owner, registrant, or operator of a vehicle involved in the accident.

MCL 5003.123(3) excludes benefits for damage to utility lines arising from the failure of a municipality, utility company or cable television to comply with MCL 247.286, which prohibits the placement of wires, cables, or other fixtures at a height less than 15 feet above any part of the traveled portion of the road. The Michigan Court of Appeals has found that MCL 247.186 only regulates the placement of utility wires over public highways, and not a private drive.

- Tractors are vehicles even though not required to be registered and licensed. Pioneer v Allstate, 401 Mich 590 (1983). In this case, the Michigan Supreme Court recognized the distinction between the terms motor vehicle MCL 500.3101(2) and vehicle MCL 500.3123(1)(a). Pioneer Mutual Ins. Co. v Allstate Ins. Co., 417 Mich 339 N.W. 2d 470 (1983). The court held that a tractor hit by a car while being operated on a public highway was a vehicle within the meaning of MCL 500.3123(1)(a), and therefore, excluded from property protection coverage. In this case, the tractor also met the definition of vehicle being operated on a highway by a power other than muscular power. Note that in 1984, the legislature amended the definition of motor vehicle in MCL 500.3101(2) to exclude farm tractors.
- Motorcycles are vehicles, and therefore, excluded from no fault PPI coverage unless parked. However, property protection benefits may be recoverable for damages to the motorcycle if it was parked in a safe and reasonable manner at the time of the accident with a motor vehicle.
- A train is not a vehicle and may claim PPI benefits from the insurer of the motor vehicle accident that collided with it. The insurer of the motor vehicle attempted to argue that the train was a vehicle operated or designed for operation upon a public highway. The court rejected this argument. The No Fault Act is to be read in conjunction with the Motor Vehicle Code, which expressly excludes trains from the definition of vehicle. Chesapeake and Ohio Railroad v Tanton, 496 F. Supp. 877 (ED. Mich 1980), aff’d 701 F. 2d 573 (1983). Accord: Michigan Northern RR Co. v Auto Owners, 176 Mich App 706 (1989).

Parked Vehicles.

The insurer of a moving vehicle that collides with a vehicle that is reasonably parked is obligated to pay property protection benefits to the parked vehicle’s owner. In United Southern Ins. Co. v Aetna Life & Casualty Ins. Co., 189 Mich App 485, 474 N.W. 2d 131 (1991), a tractor trailer
stopped on the shoulder of an interstate highway parallel to the white line and approximately 18 inches away from it, the truck was not unreasonably parked. The court affirmed the trial court’s holding that the insurer of the car that hit the truck from behind was obligated to pay property protection benefits for damages incurred to the truck as a result of the accident. Also note that a parked vehicle does not have to be legally parked, but merely parked in the manner that does not cause an unreasonable risk of damage.

**Property of the insured, a spouse, or resident relatives.**

MCL 500.3123(1)(b) excludes from property damage benefits property belonging to the insured, his spouse, and resident family members, if any of them owned, registered, or operated the vehicle involved in the accident that caused the damages. In *Cincinnati Ins Co v Pennsylvania General Ins Co*, 209 Mich App 379, 531 N.W. 2d 741 (1995), the insured’s car caught fire while parked in the garage and damaged the insured’s house and its contents. The fire was caused either by leaking oil or an electrical fault. The Court determined that the insured’s homeowners insurer was liable for the damage to the insured’s property because the car was involved in an accident and the household exclusion applied.

**Out-of-state property damages.**

No recovery is allowed under the No-Fault Act for out-of-state accidents in which property damage occurred. However, the insured may be covered for third-party property damage claims under his/her liability insurance coverage.

**IV. PROPERTY PROTECTION BENEFIT CLAIMS AGAINST SEVERAL INSURERS, PRIORITY**

MCL 500.3125

A person suffering accidental property damage shall claim property protection insurance benefits from insurers in the following order of priority: insurers of owners or registrants of vehicles involved in the accident; and insurers of operators of vehicles involved in the accident.

**Involved In The Accident**

In order to recover property protection insurance benefits, the vehicle must be “involved in the accident”. In *Turner v Auto Club Ins. Assn.*, 448 Mich 22, 528 N.W. 2d 681 (1995), the court held that this means that the motor vehicle “must actively, as opposed to passively, contribute to the accident.” *Id.* at 23. The test for whether a vehicle is involved in the accident is different than the “arising out of” standard cited in MCL 500.3121. A mere “but for” connection between the use of the vehicle and the resulting damage is not sufficient to establish that the vehicle was involved in the accident. However, physical contact with the vehicle is not necessary to show involvement. In the *Turner* case, a police car was chasing a stolen car. The stolen car went through a red light, and
hit one truck, and then a second truck. Part of the second truck hit a building and exploded. The
court determined that all four vehicles were involved in the accident. It is important to note that the
police car did not hit the building nor any of the other vehicles, but its involvement in the chase was
an “active link” in the accident. Id. at 28. There is no property damage liability exception for police
cars. There is also no stolen vehicle exception to property damage. Therefore, an insurer of the
stolen vehicle that is being operated by a thief when a collision occurs is responsible for any
resulting property damage.

**Suing The Proper Party.**

A property protection claim must be brought directly against the insurer of the owner of the
vehicle or the insurer of the driver of the vehicle, and not against the owner or driver of the vehicle.
This is particularly important because suing the wrong party may not preserve your right to sue the
correct party.

**V. DISTRIBUTION OF LOSS, REIMBURSEMENT, AND INDEMNIFICATION AMONG PROPERTY PROTECTION INSURERS**

MCL 500.3127

The provisions for distribution of loss and for reimbursement and indemnification among same
priority insurers as the same rules set forth for personal protection insurance (PPI) and MCL
500.3112(2), .3116. Therefore, when two or more insurers are in the same order of priority to pay
property protection benefits, the insurer who pays may recover from any other same priority insurers
on a pro-rata basis. Note that the statute of limitations for a PPI claim is one year from the date of
the loss. See MCL 500.3145(2).

**VI. PROCEDURAL CONSIDERATIONS**

A statute mandates that a suit for property protection insurance benefits must be filed within
one year. MCL 500.3145(2). There are no provisions requiring the claimant to give notice within
a specific period of time, other than this one year statute of limitations. Additionally, providing
notice does not toll the one year statute of limitation for bringing an action. While MCL
500.3145(1) is clear that an action for PIP benefits is tolled by written notice to the insurer in certain
circumstances, the legislature did not provide a similar tolling provision for PPI benefits. Despite
the fact that tolling does not apply in PPI claims, the Supreme Court has applied the Doctrine of
Equitable Estoppel to the one year statute of limitations in the past. In *Cincinnati Ins Co v Citizens
Ins Co*, 454 Mich 263, 562 N.W. 2d 648 (1997), the Court found that plaintiff was justified in
relying on defendant’s representations that the subrogation claim would be processed without
difficulty after completion of all documentation. Plaintiff had submitted a timely claim and the two
insurers had agreed to cooperate regarding the processing of the matter, and therefore, defendant was
estopped from asserting the statute of limitations.
It should also be noted that the one year statute of limitations set forth in MCL 500.3145(2) also applies to the State of Michigan. *Dept of Transp v Landstar Ligon*, No. 250744, 2004 Mich App Lexus 2084 (August 5, 2004)(unpublished)

MCL 500.3142 does not provide a right to interest for overdue property protection benefits. This section only applies to PIP benefits. However, property protection claimants may be deemed to be first-party claimants under a third-party beneficiary contract theory or a quasi contract statutory basis. Therefore, a first-party claimant may recover interest under the Uniform Trade Practices Act (UTPA) at the rate of 12% per year 60 days after reasonable proof has been supplied. MCL 500.2006(4).

Also note that MCL 500.3148 provides an attorney is entitled to a reasonable fee for advising or representing a claimant in an action for personal or property protection insurance benefits which are overdue. If the insurer unreasonably refused to pay the claim or delayed in making proper payment, the attorney fees shall be charged against the insurer. Conversely, an insurer may be allowed an award for a reasonable sum against a claimant as an attorneys fee in defending a case that was in some respect fraudulent or so excessive as to have no reasonable foundation.