Court of Appeals Addresses Family Member Joyriding Exception in Published Opinion

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In a published opinion issued on December 4, 2008, the Michigan Court of Appeals applied the judicially created "family member joyriding" exception in a no-fault case, but it explicitly stated that it was doing so only because of the requirements of precedent and MCR 7.215. *Roberts v Titan Ins Co*, No. 280776.

The plaintiff, an intoxicated twelve-year-old, took a vehicle for a "joy ride" and crashed into a tree, sustaining injuries. The vehicle was owned by his mother's landlord, but the plaintiff argued that the landlord had made her an "owner" by giving her permission to use the vehicle indefinitely. The plaintiff then relied on the "family member joyriding" exception, which permits the recovery of no-fault benefits when a person uses a family member's vehicle without permission even though the no-fault act generally bars recovery for persons who take a vehicle unlawfully. The exception was created in a plurality decision of the Michigan Supreme Court and was thereafter adopted by the Court of Appeals. The *Roberts* Court stated that although it disagreed with the exception because the plain language of the no-fault act did not provide for it, the precedents established in prior Court of Appeals cases mandated a holding that the mother's no-fault insurer was required to pay first-party benefits to the plaintiff.

The Michigan Court Rules require that the judges of the Court of Appeals decide whether to convene a special panel to resolve the conflict that was declared in this case between binding precedent and the outcome that the *Roberts* panel would have preferred. Although the family joyriding exception remains valid at least for the present, there are some judges of the Court of Appeals who believe that it should be revisited. A change may be forthcoming.