



## Car Dealership's Insurer is Priority Insurer in Third Party Suit Brought Against Test-Driving Customer

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On June 16, 2009, the Michigan Court of Appeals held in a published opinion that a car dealership's insurer was the priority insurer in a third-party action brought against a customer who was test driving the dealership's vehicle. *Auto-Owners Ins Co v Martin et al*, No. 281482 (June 16, 2009).

While test driving the vehicle, a customer of a car dealership was involved in a motor vehicle accident with a third party. The third party brought a negligence action against the customer, and a priority dispute arose between the dealership's insurer, Auto-Owners, and the customer's insurer, State Farm. The dealership's policy provided \$1 million in liability coverage, but it attempted to exclude garage customers who had their own insurance (in other words, the policy attempted to modify the priority rules of the no-fault act). The trial court held that Auto-Owners was the primary insurer only for \$20,000 of liability coverage.

The Court of Appeals reversed. The court first noted that owners (rather than drivers) are primarily liable for a vehicle's insurance. The court then held that because every no-fault policy must provide at least \$20,000 in liability coverage for a single injury, Auto-Owners could not exclude garage customers from coverage. The court therefore struck the provision that excluded garage customers and held that Auto-Owners was required to provide liability coverage to the customer up to the \$1 million policy limit - *not* the \$20,000 minimum coverage required by the no-fault act. The court reasoned that Auto-Owners should have known that the exclusion was invalid based on prior case law, and thus Auto-Owners was primarily liable up to its policy limit. The court also held that Auto-Owners was required to defend the customer.

This case shows the potential consequences of attempting to contractually modify the priority rules of the no-fault act. It is not yet known whether Auto-Owners will seek leave to appeal to the Michigan

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