

STATE OF MICHIGAN  
COURT OF APPEALS

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MEAD WILSON TURNER, GEOFFREY EATON,  
MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Plaintiffs,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Third Party  
Plaintiff-Appellee/  
Cross-Appellant,

and

ROYAL INSURANCE OF AMERICA,

Defendant/Appellant/  
Cross-Appellee,

and

LEAGUE GENERAL INSURANCE COMPANY,

Defendant/Appellee/  
Cross-Appellee,

and

CITY OF FERNDALE,

Third-Party Defendant/  
Cross-Appellee.

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Before: Reilly, P.J., and Michael J. Kelly and Cavanagh, JJ.

CAVANAGH, J.

This is a dispute among no-fault insurers and the city of Ferndale regarding their respective liabilities for the payment of property protection benefits arising out of a multi-vehicle accident that resulted in property damage at the accident site. The trial court granted Auto Club Insurance Association's motion for summary disposition on the issue of Royal Insurance of America's obligation to pay a share of the benefits, and Royal appeals from that decision as of right. The trial court denied summary disposition on the issue of the city of Ferndale's obligation to pay a share of the benefits, and ACIA cross-appeals from that decision as of right. We affirm both of the decisions made by the trial court.

Royal claims that it should not be required to pay property protection benefits because the vehicle insured by Royal was stolen and was being operated by a thief when the collision occurred. We disagree.

Under the no-fault act, "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." MCL 500.3121; MSA 24.13121. Injured parties can claim benefits from the "insurers of owners or registrants of vehicles involved in the accident; and insurers of operators of vehicles involved in the accident." MCL 500.3125; MSA 24.13125. An insurer of a vehicle that is stolen is "the party directly responsible for payment of property damage." Citizens Ins Co v Lowery, 159 Mich App 611, 615; 407 NW2d 55 (1987).

In this case, Royal, as the insurer of the stolen vehicle, is responsible for its share of the damage which resulted from the accident. And the fact that the vehicle insured by Royal was being operated by a thief when the accident occurred has no effect on Royal's responsibility for providing property protection coverage.

We also reject ACIA's claim that the city of Ferndale should be required to pay property protection benefits because a Ferndale police car was "involved" in the accident. The accident did not result from the police use of a vehicle but from the thief's act of fleeing from the police. Consequently, we cannot conclude that the accident was "foreseeably identifiable" with the normal use of a motor vehicle. The involvement of a police cruiser in these circumstances is merely fortuitous and any connection between the use of the police vehicle and the property damage was incidental. See Sanford v Ins Co of North America, 151 Mich App 747; 391 NW2d 473 (1986) and Peck v Auto-Owners Ins Co, 112 Mich App 329; 315 NW2d 586 (1982).

We are aware that another panel of this Court, in Auto-Owners Ins Co v Titan Indemnity Corp., 195 Mich App 428; 491 NW2d 247 (1992), was asked to decide if the comprehensive insurance provided by defendant Titan to the city of Taylor covered the death of a motorcyclist which occurred when the motorcyclist struck a sheriff's car while fleeing from the Taylor police. The comprehensive insurance policy excluded from coverage "[p]ersonal injury . . . arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile owned, rented or operated by the city or its employees."

Plaintiff argued in Titan that the accident was caused not only by the chasing police vehicle, but also by the Taylor Police Department's high speed chase policy. This Court rejected plaintiff's dual causation theory, holding that the policy concerning high speed chases "was not itself independently capable of producing the injury for which relief is sought." Titan, *supra* at 432 quoting from Vanguard Ins Co v Clarke, 438 Mich 463; 475 NW2d 48 (1991). The Court then concluded that the accident had only one cause and "the operation of the motor vehicle was 'the death-producing instrumentality.'" Id.

Because we are convinced that it was only necessary for the Titan panel to eliminate the city's chase policy as a cause of the accident, we believe that any language suggesting that the police car involved in the crash was the cause of the accident was dicta. Therefore, we are not bound by the Titan Court's apparent conclusion that the motorcyclist's death was caused by the chasing Taylor police vehicle.

Affirmed.

/s/ Maureen Pulte Reilly  
/s/ Michael J. Kelly  
/s/ Mark J. Cavanagh