

COA Opinion: Plaintiff's psychological injuries caused by witnessing a motor vehicle accident that killed her son arose out of the use of a motor vehicle as a motor vehicle, entitling her to no-fault PIP benefits.

9. March 2011 By Gaetan Gerville-Reache

In *Boertmann v Cincinnati Insurance Company*, the Court of Appeals affirmed the trial court's grant of summary disposition in plaintiff's favor, determining that plaintiff's psychological injuries caused by viewing a fatal collision involving her son, "arose out of" the "use of a motor vehicle as a motor vehicle," entitling her to no-fault personal injury protection (PIP) benefits.

Plaintiff was driving behind her son, who was operating a motorcycle. Another vehicle made a wide turn into her son's path, and the vehicle and motorcycle collided. Her son landed in a parking lot and was pronounced dead 30 minutes later. As a result of witnessing the accident plaintiff suffered psychological injuries. Plaintiff filed this action against her insurer Cincinnati Insurance Company to recover PIP benefits for wage loss, replacement services, and medical care and expenses. Both parties moved for summary disposition. The trial court initially granted summary disposition in favor of defendant, but upon reconsideration, granted summary disposition in plaintiff's favor.

Under MCL 500.3105(1) "an insurer is liable to pay benefits for accidental bodily injury arising out of the . . . use of a motor vehicle as a motor vehicle." Arising out of means that the causal connection between the injury and the use of the motor vehicle is "more than incidental, fortuitous, or 'but for.'" *Thornton v Allstate Ins Co*, 425 Mich 643, 659-660; 391 NW2d 320 (1986); *Scott v State Farm Mut Auto Ins Co*, 278 Mich App 578, 582, 584, 586; 751 NW2d 51 (2008).

In affirming the trial court's determination that plaintiff's injuries "arose out of" the use of the motor vehicle as a motor vehicle, the Court of Appeals distinguished two cases which had held that psychological injuries caused by a loved one's death in an automobile accident lacked a sufficient causal connection to the motor vehicle accident. In *Williams v Citizens Mut Ins Co*, 94 Mich App 762, 763-765; 290 NW2d 76 (1980) the court found an inadequate causal connection when plaintiff incurred psychological injury following the death of her child in a motor vehicle accident that she did not observe. In *Keller v Citizens Ins Co of America*, 199 Mich App 714, 715-716; 502 NW2d 329 (1993) the court found an inadequate causal connection when the plaintiff heard the screech of a vehicle's tires before the vehicle struck the plaintiff's child. The Court emphasized that in the present case the evidence (the psychologist's affidavit) shows that plaintiff's injuries were caused by her witnessing the collision as opposed to being caused by the death of her son. The Court noted that defendant did not present any evidence suggesting that the psychological injuries were not caused by plaintiff's witnessing the accident itself.