

## COA Opinion: Passenger in stolen car entitled to no-fault insurance benefits

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On June 8, 2010, the Court of Appeals published its decision in *Henry Ford Health System v. Esurance Ins. Co.*, No. 288633. In this case, a hospital was seeking to recover no-fault insurance benefits from a vehicle's insurer to cover the costs incurred in treating a passenger injured when that vehicle hit a utility pole. At the time of the accident, however, the vehicle had been stolen from its owner. The trial court had denied cross motions for summary disposition, and a jury had found that this passenger had unlawfully taken the vehicle, and the trial court entered a judgment in favor of the insurer. In an opinion authored by Judge Murphy, the Court of Appeals found that the trial court had erred in denying the hospital's motion for summary disposition, reversed the trial court's judgment and directed judgment be entered in favor of the hospital. The case focused on the section of the No-Fault Act that provides that a person is not entitled to benefits if "[t]he person was using a motor vehicle or motorcycle which he or she has taken unlawfully..." MCL § 500.3113(a). Judge Murphy focused on the words "has taken", pointing out that the phrase indicates a past or completed act. In this case, the injured person did not take the vehicle - it had already been stolen, and his girlfriend had borrowed the car (knowing it was stolen) and picked him up, and he simply rode as a passenger through the time he was injured. Thus, the injured person did not participate in the "taking" of the vehicle. Judge Murphy argues that if the Legislature had wanted to exclude unlawful "use" of the vehicle from no-fault benefits, it easily could have done so. But, because the Legislature chose to limit the exclusion to someone who had actively "taken" the vehicle, that exclusion did not apply in this case and the hospital was entitled to recover no-fault benefits.