

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

The Post-Covenant Era: Michigan Court of Appeals Favors Dismissal of Provider Claims

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In *Eubanks, et al v State Farm Mut Auto Ins Co*, ___ Mich App ___ (2017) (Docket No. 330078), the plaintiff filed suit against State Farm seeking first-party benefits following a motor vehicle accident that occurred in July 2013. Thereafter, the trial court permitted three of the plaintiff's medical providers, Get Well Medical Transport, Advanced Care Rehab, and Sinai Diagnostic Group, to intervene in the action in order to recover medical expenses for services rendered to the plaintiff in connection with his alleged injury.

Throughout the course of litigation, the plaintiff failed to comply with multiple discovery orders. Accordingly, the defendant filed a Motion to Dismiss Plaintiff's Claims for Discovery Order Violations, which was granted. Following the dismissal, the defendant moved to dismiss the intervening provider claims, arguing that the dismissal of the plaintiff's case necessitated dismissal of the intervening plaintiffs' claims as well. The trial court denied the defendant's dispositive motion, concluding that the claims of the intervening plaintiffs were not extinguished by the dismissal of the plaintiff's claim. The defendant appealed.

On appeal, the defendant contended that the trial court erred by failing to grant its dispositive motion relative to the intervening providers. The defendant argued that, because the plaintiff's claim for first-party benefits was dismissed with prejudice, the intervening plaintiffs'

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The Michigan Supreme Court's recent decision in *Covenant v State Farm Mut Auto Ins Co*, ___ Mich ___ (2017) (Docket No. 152758) altered the no-fault landscape causing judges and litigants to reevaluate the handling of medical provider suits. In *Eubanks, et al v State Farm Mut Auto Ins Co*, ___ Mich App ___ (2017) (Docket No. 330078), the Court of Appeals analyzed a provider suit in a post-*Covenant* world. Rather than analyzing the substance of the issues contained in defendant's appeal brief, the Court turned to *Covenant* on its own volition. It ruled that the trial court erred in denying defendant's dispositive motion because, as an initial matter, the providers lacked standing to sue the no-fault carrier directly.

For those in the litigation trenches, *Eubanks* is significant as many trial judges have been reluctant to dismiss provider cases in accordance with *Covenant*. Instead, judges are allowing providers to amend their complaint to sustain a claim or obtain an assignment from the claimant. The *Eubanks* case makes no reference to these "second chances" for providers. Instead, the appellate court was quick to dismiss the case based upon the *Covenant* decision.

derivative claims were also precluded. The defendant relied upon the recent case of *Dawood v State Farm Mutual Auto Ins Co*, 317 Mich App 517, 520 (2016).

Rather than analyzing the case on appeal pursuant to the ruling in *Dawood*, the Court instead looked to the recent Supreme Court decision, *Covenant Medical Center v State Farm*, ___ Mich ___; 895 NW2d 490 (2017) (Docket No. 152758). Specifically, the Court indicated that the Supreme Court conclusively resolved the issue of whether healthcare providers possess a statutory cause of action against insurers for recovery of first-party benefits under the Michigan No-Fault Act. Indeed, *Covenant* specifically held that, “healthcare providers do not possess a statutory cause of action against No-Fault insurers for recovery of personal protection insurance benefits under the No-Fault Act.” Specifically, with respect to MCL 500.3112, the Supreme Court held:

While this provision undoubtedly allows No-Fault insurers to directly pay healthcare providers for the benefit of an injured person, its terms do not grant healthcare providers a statutory cause of action against insurers to recover the costs of providing products, services, and accommodations to an injured person. Rather, MCL 500.3112 permits a No-Fault insurer to discharge its liability to an injured person by paying a healthcare provider directly, on the injured person’s behalf.

The Supreme Court further determined that no other provision of the No-Fault Act grants a statutory cause of action to healthcare providers for the recovery of personal protection benefits from an insurer.

In accordance with *Covenant Medical Center*, the appellate court in *Eubanks* held that intervening plaintiffs did not have a statutory cause of action against defendant for recovery of personal protection insurance benefits under the No-Fault Act. Therefore, the trial court erred in denying defendant’s motion for summary disposition.

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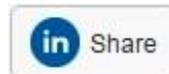
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