

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Court of Appeals confirmed that the dismissal of a claimant's lawsuit for a discovery violation also bars the claimant's providers from recovery

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After a November 28, 2012 accident, Kevin Dawoud, Rasha Kamel, and Mikho Essa sued State Farm for PIP benefits. *Kevin Dawoud, et al v State Farm Mutual Ins Co*, ___ Mich App ___ (2016). Grace Transportation and Utica Physical Therapy, who provided medical transportation and physical therapy to the three underlying claimants, were allowed to intervene. Eventually, the three claimants failed to comply with discovery orders, failed to attend their depositions on three separate occasions, and had their claims dismissed as a result. The claimants did not appeal the dismissal of their claims.

After the claimants were dismissed, State Farm moved to dismiss the claims of the two providers. State Farm argued that the dismissal of the underlying claimants' claims operated as an adjudication on the merits pursuant to MCR 2.504 and, therefore, the claims brought by Grace Transportation and Utica Physical Therapy should be dismissed. The providers responded by arguing that they had their own cause of action and should not be barred from recovery by the dismissal of the underlying claimants. The trial court granted State Farm's motion and dismissed the providers' claims as well.

On appeal, the parties agreed that a provider's claim would fail anytime the underlying claimant's claim had been dismissed for substantive reasons (e.g., if the claimant's injury was not the result of an automobile accident). Instead, the issue on appeal was whether a provider's independent claim would survive even though the underlying claimant's claim had been dismissed for failure to attend depositions or for other discovery violations.

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Providers often bring their own lawsuit directly against a no-fault carrier. When the underlying claimant also brings a lawsuit which is dismissed for a substantive reason (for example, that the injury did not arise from an accident), that order will bar the provider from recovery as well.

In *Kevin Dawoud, et al v State Farm*, a published opinion, the Court of Appeals confirmed that dismissal for discovery violations, even though not based on a substantive issue, is nevertheless an adjudication on the merits. Therefore, when a claimant's lawsuit is dismissed for discovery violations, the claimant's providers are barred from recovery.

Grace Transportation and Utica Physical Therapy relied on MCL 500.3112 and *Wyoming Chiropractic Health Clinic, P.C. v Auto-Owners Ins Co*, 308 Mich App 389; 864 NW2d 598 (2014). The Court of Appeals dispensed with the providers' reliance on Section 3112 indicating that it said nothing about whether a provider can proceed against a no-fault carrier when the underlying claimant's claim had been dismissed because of a discovery violation. Instead, the Section simply indicates that an "interested party may apply to the circuit court for an appropriate order" when there is doubt about the allocation of PIP benefits.

The Court of Appeals next addressed the providers' reliance on *Wyoming Chiropractic* which held that a provider has standing to bring a direct cause of action against a no-fault carrier. The Court pointed out that *Wyoming Chiropractic* primarily gave standing to bring suit, which Grace Transportation and Utica Physical Therapy did. More specifically, the Court ruled that standing had little to do with the issue on appeal and more to do with the idea that a provider's claim to benefits, at least in some circumstances, is derivative of the injured party's claim. The issue on appeal boiled down to whether the dismissal of the underlying claimants due to discovery violations should be treated differently than a substantive dismissal on the merits. The Court of Appeals held that it should not.

The Court made reference to MCR 2.313(B)(2)(c) which provides that a trial court may dismiss a case or any part of it for failure to comply with the court's discovery order. The Court also referred to MCR 2.504(B)(3) which indicates that, unless the court specifies otherwise, a dismissal operates as an adjudication on the merits. Again, the parties agreed that, if a claimant's claim is substantively barred on the merits, any derivative claim necessarily fails as well. The Court of Appeals confirmed that this extended this to a dismissal for discovery violations.

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