

# no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

## *Covenant v State Farm* Applies Retroactively

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On September 4, 2014, Zoie Bonner was involved in an accident. The next day she treated at W.A. Foote Memorial Hospital (now known as Henry Ford Allegiance Health) and incurred services in the amount of \$9,113. Unfortunately for the hospital, no insurance information was obtained from the claimant while she was being treated. Over the next year, the hospital underwent multiple efforts to find out if the underlying claimant had access to no-fault insurance.

Eventually, after not finding any available insurance, the hospital sued the Michigan Assigned Claims Plan seeking to avoid having its bill barred by the one-year back rule. The trial court dismissed the hospital's case because an insurer was found. The hospital appealed. However, during the pendency of the appeal, the Michigan Supreme Court issued its decision in *Covenant v State Farm* finding that providers do not have a direct cause of action against no-fault carriers.

The Court of Appeals first discussed whether to apply the ruling in *Covenant* to this case and, more importantly, whether *Covenant* should apply prospectively only or retroactively as well. After determining that the hospital did not waive this issue by failing to raise it previously, the Court of Appeals looked in detail at the history of case law regarding whether a published opinion applies prospectively versus retroactively.

The Court also pointed out that the Supreme Court has remanded various provider suits back to the Court of Appeals since issuing its opinion in *Covenant*. This has given the Court of Appeals an opportunity to rule on these cases for a second time; this time considering *Covenant*. This was viewed as an indication that the Supreme Court intended for *Covenant* to apply retroactively as well as prospectively.

### SECRET WARDLE NOTES

Since the Michigan Supreme Court issued its decision in *Covenant v State Farm*, multiple dispositive motions have been filed in both circuit and district courts across the state. There has been some inconsistency with how different courts have been handling arguments raised by the parties. One issue has been how *Covenant* is applied to pending cases. In other words, does *Covenant* apply retroactively to all pending cases or only to cases filed after the opinion was issued?

In its published opinion, the Court of Appeals put an end to any unpredictability regarding this issue by ruling that *Covenant* applies retroactively. While the Court went into detail about the historical analysis of retroactivity versus prospectivity, the ruling was very simple: based on this opinion, providers may not maintain a private cause of action even if the lawsuit was filed before *Covenant*.

After reviewing the case law on this issue in detail, the Court confirmed this conclusion and ruled that *Covenant* applies retroactively.

One of the three Judges issued a simple, two sentence concurring opinion indicating that she was "...unpersuaded that there is any sufficient reason present in this matter for departing from the general rule that decisions from our Supreme Court should be given retroactive effect by default." In other words, maybe this issue should not have been such an issue to begin with. For now, no-fault insurers can be confident that *Covenant* will be given retroactive effect.

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