

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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The Uninsured, The Unidentified And The Unwilling

By Michael K. Faust, II

The Court of Appeals affirmed a trial court's decision to dismiss an uninsured motorist claim because Plaintiff willfully refused to attend a pre-suit examination under oath (EUO).

Plaintiff Lashaunda Graves was injured in a motor vehicle accident while driving her mother's vehicle. The other vehicle involved was owned, but not driven by, Jami Lessard. Lessard alleged in a police report that her vehicle had been stolen. Lessard stated that she had no knowledge of the identity of the driver. The insurer of Lessard's vehicle denied liability for Plaintiff's injuries on the basis that the vehicle had been reported as stolen and Plaintiff's mother was denied her request for payment of her collision deductible. Contrary to the police report filed by Lessard, Plaintiff's mother informed her State Farm insurance agent that Lessard's vehicle had not been stolen and that Lessard knew the identity of the driver.

Plaintiff subsequently made a claim for uninsured motorist benefits with State Farm. Based upon conflicting information, State Farm requested that Plaintiff and her mother submit to an EUO as required under the policy. The policy contained language that anyone insured or otherwise claiming uninsured motorist benefits "must, at our option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably after as we require." The EUO was scheduled, however, Plaintiff's counsel stated "that they were unwilling to submit to an EUO, and would be filing suit."

Plaintiff's law suit commenced and State Farm filed a Motion for Summary Disposition based upon Plaintiff's lack of cooperation and failure to attend the scheduled EUO as required by the policy. The trial court granted State Farm's motion. The court found that Plaintiff had acted willfully in not meeting the requirements of the policy and that the policy language was not contradictory. Therefore, Plaintiff was not excused from complying with the request for an EUO just because her claim was initially denied. The trial court dismissed Plaintiff's case.

SECRET WARDLE NOTES:

When dealing with a contractual claim for uninsured motorist benefits it is important to review the policy terms and conditions. If a claimant fails to comply with the requirements of the policy it may be a basis for dismissal of the lawsuit.

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The Court of Appeals affirmed the trial court's dismissal of Plaintiff's case with prejudice given that the trial court found Plaintiff acted willfully. *Graves v. State Farm Ins. Co.*, (unpublished COA No. 289822, February 25, 2010). The Court further stated that the policy language "unambiguously requires the insured to submit to an EUO at State Farm's request, and states that legal action may not be brought against State Farm until the insured fully complies with the policy's provisions." *Id.* Michigan case law holds that when an insured does not permit oral examination when required to do so, recovery under the policy is barred. Citing *Yeo v. State Farm Ins. Co.*, 219 Mich App 45.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Motor Vehicle Litigation Practice Group Chairs

Thomas J. Azoni
John H. Cowley, Jr.

Editor

Bonny Craft

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