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LAW FAX

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COURT OF APPEALS MAKES “ILLOGICAL” HOLDING

BENNETT J. BUSH¹ - CONTRIBUTOR

In *Cooper v Jenkins* ___ Mich App ___ (2009), the plaintiff, Phillip Cooper, was driving an uninsured vehicle owned by his girlfriend Dalana Norman when he was involved in a motor vehicle accident. Because there was no other no-fault provider, Farm Bureau was assigned the claim.

In an interesting twist, after the doctor ordered attendant care, plaintiff “hired” Norman, the owner of the uninsured vehicle, to provide the attendant care. Plaintiff then sued Farm Bureau for benefits, including the \$60,000 owed to Norman for attendant care. In response, Farm Bureau took the position that since it had a statutory right to seek reimbursement against Ms. Norman, pursuant to MCL 500.3177(1), it was illogical to require it to pay her benefits only to then sue her for reimbursement because she was the uninsured owner of the vehicle plaintiff was driving at the time of the accident.

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Unfortunately, both the trial court² and Court of Appeals disagreed with Farm Bureau's position. In finding that Farm Bureau had to pay plaintiff for the attendant care benefits sought, the Court of Appeals noted that "[t]he statutes clearly use **mandating** language when describing the insurer's duty to pay benefits, but use **permissive** language in describing the ability of the insurance company to seek reimbursement from the uninsured motorist." The Court of Appeals noted that **nothing** in the No-Fault Act provides that an insurer may withhold payment based on the eligibility of any service provider, only the **injured person's status** is considered. The Court of Appeals held that the ability to recover benefits paid from the owner or registrant of an uninsured motor vehicle, MCL 500.3177(1), does not by itself equate to a legal right to indemnification. Instead, the carrier must first obtain a judgment against the owner of the uninsured vehicle, then seek reimbursement.

The Court of Appeals also rejected Farm Bureau's argument that it should not have to pay for attendant care that would go to Ms. Norman as to do so would allow her to benefit from her "wrongful conduct." The Court of Appeals wrote that there was nothing unlawful about a friend or family member providing attendant care or replacement services. Rather, Norman's unlawful act was owning and operating an uninsured vehicle, a misdemeanor under MCL 500.3102(2). The court then indicated that it was the responsibility of the legal system, not the insurance industry, to enforce the statute.

If an insurer finds itself in a position where it is paying benefits indirectly to an uninsured motorist from whom it could seek reimbursement, it is important to immediately file a claim against that person to get a judgment as soon as possible. If a claimant has already filed suit, the insurer should move quickly to add the uninsured motorist as a third party defendant. Finally, the insurer may also wish to try putting the funds that would go to the uninsured motorist in escrow while it attempts to obtain a judgment.

SPRING BREAKFAST SEMINAR

The Grand Rapids office of Garan Lucow Miller P.C. is pleased to present its Annual Spring Breakfast Seminar on April 16, 2009 at the Frederik Meijer Gardens and Sculpture Park, located at 1000 East Beltline, NE in Grand Rapids {(616) 957-1580}. The day will begin with a continental breakfast from 8:00 - 8:25 am, followed by the seminar. Comprehensive written materials will be distributed to all program attendees. After the seminar, feel free to enjoy all of the open indoor garden areas as our guest!

If you are able to attend this complimentary annual event, please register via e-mail to: lbeatty@garanlucow.com or phone Lynn Beatty at (616) 742-5500 or (800) 494-6312 for reservations. **A complete agenda of seminar topics will be published here shortly.** We look forward to seeing you!

² The trial court ordered Farm Bureau to pay \$20,000 to the plaintiff's attorney and to put \$40,000 in escrow until it secured a judgment against Ms. Norman.

FALL BREAKFAST SEMINAR

Mark your calendar for the Firm's Fall Breakfast Seminar which will be held at the Troy Marriott Hotel on Tuesday, October 27, 2009. **Watch Law Fax for further details.**

BUCKEYE SEMINAR

MARCH 26, 2009

**GREATER COLUMBUS CONVENTION CENTER
400 North High Street | Columbus | Ohio**

8:30 - 9:00 a.m. CONTINENTAL BREAKFAST / REGISTRATION

9:00 - 9:10 a.m. WELCOME AND INTRODUCTION
Speaker: **SUSAN M. WILLIAMS**

9:10 - 10:00 a.m. **A NEW SUPREME COURT - WHAT THE FUTURE MAY HOLD?**
Speaker: **DANIEL S. SAYLOR**

10:00 - 10:45 a.m. **UPDATES IN NO-FAULT LAW**
Speaker: **SUSAN M. WILLIAMS**

10:45 - 11:00 a.m. BREAK

11:00 - 11:45 a.m. **RECOUPMENT OF BENEFITS UNDER THE WORKERS' COMPENSATION ACT**
Speaker: **MICHAEL J. DEPOLO**

11:45 - 1:00 p.m. LUNCH ON YOUR OWN

1:00 - 2:00 p.m. **CURRENT STATE OF THE LAW FOR 3RD PARTY LIABILITY / SIBF**
Speaker: **BETH A. ANDREWS**

2:00 - 2:30 p.m. **THE CHANGING FACE OF MEDICAID**
Speaker: **ROBERT L. GOLDENBOGEN**

2:30 - 3:00 p.m. QUESTION AND ANSWER SESSION
RETURN EVALUATION FORMS

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The Buckeye Seminar, presented by Garan Luow Miller P.C., will be held on March 26, 2009, at the Greater Columbus Convention Center located at 400 North High Street in Columbus, Ohio. The day will begin with a continental breakfast from 8:30 a.m. - 9:00 a.m., followed by the seminar. Comprehensive written materials will be distributed to all program attendees. To register, contact Eileen Carty at ecarty@garanluow.com.

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