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Gallagher Sharp Case of Note: Michigan Court of Appeals Holds *Covenant* Applies Retroactively

On Thursday, August 31, 2017, the Michigan Court of Appeals held that the Michigan Supreme Court's decision in *Covenant Medical Center, Inc. v. State Farm Mut. Auto. Ins. Co.* applies retroactively to cases that were pending when the *Covenant* decision was made on May 25, 2017.

In *Covenant*, the Michigan Supreme Court held that healthcare providers do not have a statutory cause of action against insurance companies for no-fault insurance benefits under MCL 500.3101 et seq. Prior to the Court's decision in *Covenant*, healthcare providers could claim no-fault benefits even after the insurer reached a settlement with the injured party. In other words, an injured party could release its insurer from all claims for no-fault benefits, and this would not prevent the healthcare provider from having an independent cause of action against the insurer for benefits arising out of the same motor vehicle accident under MCL 500.3101 et seq. The Michigan Supreme Court's decision in *Covenant* eradicated this independent cause of action for healthcare providers.

While *Covenant* definitively concluded that healthcare providers do not have an independent cause of action against insurers for no-fault insurance benefits under MCL 500.3101 et seq., it failed to address whether this decision was to be applied only prospectively or to cases pending when the *Covenant* decision was issued. As a result, Michigan courts interpreted the retroactive applicability of *Covenant* in differing manners prior to the Court of Appeals' ruling in *W. A. Foote Memorial Hosp. v. Michigan Assigned Claims Plan*.

In *W.A. Foote*, the Michigan Court of Appeals conclusively ruled that *Covenant* does apply retroactively to cases that were pending when the *Covenant* decision was made. Relying on the United States Supreme Court's decision in *Harper v. Virginia Dep't. of Taxation* and the Michigan Supreme Court's decision in *Spectrum Health Hosps. v. Farm Bureau Mut. Ins. Co. of Michigan*, the Court of Appeals reasoned,

“. . . judicial decisions of statutory interpretation must apply retroactively because retroactivity is the vehicle by which ‘the law’ remains ‘the law.’ As *Spectrum Health* dictates, intervening judicial decisions that may have misinterpreted existing statutory law simply are not, and never were, ‘the law.’ The necessary consequence is that those decisions of this Court that were overruled by our Supreme Court in *Covenant* were not ‘the law’ and thus did not, and do not, afford plaintiff a statutory right to recover PIP benefits directly from an insurer.”

The Court of Appeals concluded, “*Spectrum Health* controls our decision, and. . . the application of *Spectrum Health* requires that we apply *Covenant* retroactively to this case.” The Court declined, however, to specify whether its use of “retroactive” was to be construed as full or limited retroactivity in relation to the applicability of *Covenant* in this case. It invited the

Michigan Supreme Court to clarify the respective circumstances in which full retroactivity and limited retroactivity should apply.

The Syllabus and Opinion can be found at:

http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20170831_C333360_50_333360C.OPN.PDF

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