

STATE OF MICHIGAN
IN THE SUPREME COURT

COVENANT MEDICAL CENTER, INC.,

Supreme Court No. 152758

Plaintiff/Appellee,

COA Docket No. 322108

v

Lower Court Case No. 13-020416-NF
Saginaw County Circuit Court

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Appellant.

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**Covenant Medical Center's Brief Opposing State Farm's
Application for Leave to Appeal**

*****ORAL ARGUMENT REQUESTED*****

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COUNTER-STATEMENT OF QUESTION PRESENTED

I. An insurer's payment of no-fault benefits to a person who it believes is entitled to the benefits discharges the insurer's liability to the extent of the payment, "*unless* the insurer has been notified in writing of the claim of some other person." MCL 500.3112 (emphasis added). In 2012, Covenant notified State Farm in writing of its no-fault claim for Jack Stockford. In 2013, State Farm paid no-fault benefits to Mr. Stockford in order to settle Mr. Stockford's separate lawsuit. Did Court of Appeals correctly hold State Farm's payment to Mr. Stockford does not discharge Covenant's claim?

Covenant's Answer: Yes.

State Farm's Answer: No.

Circuit Court's Answer: No.

Court of Appeal's Answer: Yes.

INTRODUCTION

Under MCL 500.3112, payment of no-fault benefits by an insurer to its insured discharges the insurer's liability to the extent of the payment, "*unless* the insurer has been notified in writing of the claim of some other person." (Emphasis added.) In 2012, State Farm received notice in writing of Covenant's claim for no-fault benefits for Jack Stockford. Months later, in 2013, State Farm paid no-fault benefits to Mr. Stockford and obtained a release from him in settlement of a separate lawsuit. But because State Farm had notice in writing of Covenant's claims months before it entered into the payment and release with Mr. Stockford, neither the payment nor the release discharges Covenant's claims. The Court of Appeals correctly held that the plain language of MCL 500.3112 requires this result.

Like Chicken Little's refrain "the sky is falling!," State Farm's objections to the Court of Appeals' holding are mere alarmist rhetoric. State Farm complains that insurers now must seek an apportionment order in every case where the insurer has received notice in writing of a medical provider's claim. But an apportionment order is just one of several options. Instead of an apportionment order, an insurer can carve the provider's claim out of the settlement; the patient's attorney can seek authority from the provider to negotiate the provider's claim; or the insurer can *contact the provider* and negotiate a global settlement with all parties. The Court of Appeals' opinion does not foreclose these options.

State Farm also claims that insurers can circumvent MCL 500.3112 via a release. But insurers cannot accomplish by contract what the statute expressly prohibits. That is, after an insurer receives notice in writing of a medical provider's claim, the insurer cannot extinguish that claim through a payment and release with its insured. Allowing insurers to circumvent MCL 500.3112 by contract with their insureds would render MCL 500.3112 nugatory.

State Farm further contends a providers' claim is not the claim of "some other person." But for more than a decade, Michigan law has held that providers are claimants under the No-Fault Act with standing to bring separate lawsuits. Indeed, in the circuit court, State Farm admitted that providers are claimants with a direct right of reimbursement. As such, a medical provider's claim is the claim of "some other person" under MCL 500.3112.

Finally, State Farm contends that the Court of Appeals' ruling conflicts with prior rulings and violates the purpose of the No-Fault Act. But the rulings that State Farm cites address fraud, the amount in controversy for purposes of subject matter jurisdiction, or the effect of a payment or release executed *before* the insurer received notice in writing of the provider's claim. Those rulings do not address the issue here: whether a payment or release bars a provider's claim when the insurer received notice in writing of the provider's claims *before* entering into the payment and release with the insured. Because this case addresses a different issue, it does not conflict with the Court of Appeals' prior rulings, but instead compliments them.

In doing so, the Court of Appeals' ruling furthers the purpose of the No-Fault Act. By holding that an insurer cannot extinguish a provider's noticed claim without the provider's consent or the court's approval, the court affirmed the provider's claimant status, which expedites payment to the provider and furthers the goal of prompt reparation. Additionally, the ruling encourages insurers to resolve all known no-fault claims, which protects the insurer and, more importantly, the insured.

The Court of Appeals' ruling follows the plain language of the statute, is not inconsistent with its prior rulings, and furthers the purpose of the No-Fault Act. State Farm's application for leave to appeal should be denied.

COUNTER-STATEMENT OF FACTS

A. Jack Stockford's motor vehicle accident and treatment at Covenant.

On June 20, 2011, Jack Stockford suffered injuries in a motor vehicle accident. (Compl. ¶5.) On June 28, 2012, July 25-27, 2012, and October 3, 2012, Covenant provided medical care and treatment to Mr. Stockford for injuries arising out of his motor vehicle accident. (Compl. ¶8.) Covenant's charges for this care and treatment total \$43,322.80.

B. Months after State Farm receives written notice of Covenant's claim, State Farm settles a separate lawsuit with Mr. Stockford.

On July 3, 2012, August 2, 2012, and October 9, 2012, Covenant billed State Farm for the above dates of service by providing State Farm with Covenant's UB-04 billing forms, itemized statements, and medical records. (Compl. ¶11.) That is, on these dates, Covenant provided to State Farm notice in writing of Covenant's claims.

On November 15, 2012, State Farm responded to Covenant's claims. (See Compl. ¶14; **Exhibit 1**, State Farm's Denial). State Farm denied coverage, alleging that Covenant's care and treatment of Mr. Stockford was not reasonably necessary. (Ex. 1.) When Covenant billed State Farm and when State Farm responded, no release or payment between State Farm and Mr. Stockford existed.

On April 2, 2013—*six months* after State Farm received written notice of Covenant's claims for no-fault benefits and more than four months after State Farm responded to those claims—State Farm settled a separate lawsuit with Mr. Stockford.¹ As part of that settlement, State Farm paid Mr. Stockford \$59,000 in no-fault benefits, and Mr. Stockford signed a release. (**Exhibit 2**.) Although the release document specifically mentions Covenant's claim,

¹ The separate case was *Stockford v State Farm Mut Auto In Co*, Case No. 12-016370-CK-1, in the Saginaw Circuit Court before Judge Fred Borchard.

Covenant was not a party to it. Nor was Covenant contacted before its execution. In other words, State Farm tried to cut Covenant out of the settlement.

C. Covenant files suit, and the circuit court grants State Farm's motion for summary disposition.

On April 23, 2013, Covenant sued State Farm, seeking to recover no-fault benefits for its care and treatment of Mr. Stockford. On May 24, 2013, State Farm filed its answer and attached a copy of the payment and release. This is the first time that Covenant learned of the payment and release between Mr. Stockford and State Farm.

On September 20, 2013, State Farm filed a summary disposition motion based on the payment and release. On February 3, 2014, the circuit court heard arguments on that motion.

At the hearing, State Farm made two important admissions. First, State Farm admitted that medical providers, like Covenant, are independent claimants under the no-fault act. (**Exhibit 3**, Tr. of 2/3/14 MSD Hearing, p. 5:12-17) (“[W]e don’t take exception to the cases that plainly have now said there is a direct right of reimbursement . . . I do not quarrel with anything [counsel for Covenant] cited in his brief in that regard.”) Second, State Farm admitted that it received notice in writing of Covenant’s claim *before* it entered into the payment and release with Mr. Stockford. *Id* at p. 7:14-15 (“In this particular case, State Farm had knowledge of a claim . . .”), and p. 9:4-5 (“So, with that, Your Honor, the fact that Covenant was known is not determinative.”)

On May 15, 2014, the circuit court issued an opinion and order granting State Farm’s motion. The circuit court concluded that the payment and release barred Covenant’s no-fault claims for Mr. Stockford, even though State Farm had written notice of Covenant’s claims before it entered into the payment and release. (May 15, 2014 Opinion and Order, p. 5-6.). Covenant timely appealed to the Court of Appeals.

D. The Court of Appeals reverses the circuit court.

In a published decision, the Court of Appeals reversed the circuit court's decision granting State Farm's motion for summary disposition. (**Exhibit 4**, COA Opinion) The Court of Appeals held that, because State Farm had received notice in writing of Covenant's claim before State Farm entered in the payment and release with Mr. Stockford, neither the payment nor the release discharged Covenant's claim. (*Id* at 3.) The court reasoned:

MCL 500.3112 provides that if the insurer does not have notice in writing of any other claims to payment for a particular covered service, then a good faith payment to its insured is a discharge of its liability for that service. *However, the plain text of the statute provides that if the insurer has notice in writing of a third party's claim, then the insurer cannot discharge its liability to the third party simply by settling with its insured.* Such a payment is not in good faith because the insurer is aware of a third party's right and seeks to extinguish it without providing notice to the affected third party. Instead, the statute requires that the insurer apply to the circuit court for an appropriate order directing how the no-fault benefits should be allocated. [(Emphasis added).]

State Farm now seeks leave to appeal.

COUNTER STATEMENT OF STANDARD OF REVIEW

This Court's decision whether to grant leave to appeal is discretionary. An appellant's application for leave to appeal must demonstrate at least one of the grounds listed in MCR 7.302(B), including that the issue involves significant legal principles of major significance to the state's jurisprudence.

If this Court grants leave to appeal, then the ruling on State Farm's summary disposition motion is reviewed *de novo*. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999); *Associated Builders & Contractors v Wilbur*, 472 Mich 117, 123; 693 NW2d 374 (2005).

ARGUMENT

I. THE COURT OF APPEALS RULING FOLLOWS THE PLAIN LANGUAGE OF MCL 500.3112.

MCL 500.3112 addresses the effect of an insurer's payment of no-fault benefits when the insurer has received multiple claims from different claimants. In relevant part, MCL 500.3112 provides:

Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments *unless the insurer has been notified in writing of the claim of some other person*. If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate. [(Emphasis added).]

As the Court of Appeals correctly recognized, the plain language of the statute contemplates two situations. The first situation occurs when the insurer receives notice in writing of another's claim *after* the insurer makes a good faith payment. This first situation does not trigger the "unless" clause, so the claim is discharged. The second situation occurs when the insurer receives notice in writing of another's claim *before* the insurer makes a good faith payment. This second situation does trigger the "unless" clause, so the insurer's payment does not discharge the claim of the third party. (COA Opinion, p. 2-3.)

This case involves the second situation. State Farm received notice in writing of Covenant's claim months *before* State Farm entered into the payment and release with Mr. Stockford. Although State Farm contends that the Court of Appeals' decision raises the question

of what constitutes notice in writing, (State Farm’s Br., p. 11), State Farm does not dispute that it received notice in writing of Covenant’s claim in this case. Nor could State Farm dispute this. At the summary disposition hearing, State Farm’s counsel admitted that State Farm had notice in writing of Covenant’s claim before it entered into the payment and release with Mr. Stockford. (Ex. 3, p. 7:14-15.) Additionally, the release document specifically mentions Covenant’s claim, which demonstrates that State Farm had notice of Covenant’s claim before entering into the payment and release.

Because State Farm admittedly received notice in writing of Covenant’s claim before it paid Mr. Stockford no-fault benefits per the release, the “unless” clause of MCL 500.3112 is triggered. Thus, as the Court of Appeals correctly held, “State Farm’s payment to Mr. Stockford did not discharge its liability to [Covenant]” per the plain language of MCL 500.3112. (COA Opinion at p. 3.)

II. STATE FARM’S POSITION VIOLATES THE PLAIN LANGUAGE OF MCL 500.3112.

A. The Court of Appeals’ ruling does not mandate that insurers apply for an apportionment order for every settlement.

State Farm’s main contention is that Covenant’s position and the Court of Appeals’ ruling impermissibly require an insurer apply for an apportionment order every time an insurer wants to settle a no-fault claim. (State Farm Br., p 13, 19.) But State Farm did not raise this argument below, so State Farm has waived it. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008)(“[G]enerally a failure to timely raise an issue waives review of that issue on appeal.”)(citation and quotation omitted).

Even if State Farm had not waived this argument, it fails on the merits. This is a strawman argument, peppered for dramatic effect with State Farm's alarmist rhetoric.² The Court of Appeals did *not* hold, as State Farm suggests, that an insurer must apply to the circuit court for an apportionment order for every settlement.

The Court of Appeals' ruling leaves insurers with several options to settle a claim without seeking an apportionment order. First, the insurer can settle with its insured before it receives notice in writing of any other claims. Second, the insurer could carve out from the settlement or ADR proceeding with the insured the claims of any third parties who have provided notice in writing.³ Third, the insurer could *contact the third party* and negotiate directly with the third party and the insured to reach a global resolution. Fourth, the insurer could ask the insured's attorney to contact the third party and obtain the third party's authorization to settle its claims. These remedies are available to the insurer before a lawsuit is filed, during a lawsuit, during an ADR proceeding, and after judgment. An apportionment order is just one of several options available to an insurer.

State Farm's real complaint is that the Court of Appeals' opinion prevents insurers from extinguishing a medical provider's noticed claim without notifying the provider. As this case demonstrates, State Farm wants to cut providers out of settlements because State Farm believes that it can obtain more favorable settlements from patients, who almost always have fewer resources for litigation than do medical providers. As State Farm states on page 19 of its Brief, State Farm wants the medical provider to seek payment from the patient, which

² State Farm claims that this case "has rocked the no-fault world" and that "apportionment proceedings may well become three-ring circuses." (State Farm Br., p 10, 12.) State Farm also claims that the Court of Appeals decision "has turned the current no-fault system on its head," "virtually eliminate[s] the possibility of timely out-of-court settlements for PIP claims," and "opens a Pandora's box of problems." (*Id* at 1-3.) State Farm further claims that "insurers will be running to Circuit Courts in droves . . ." (*Id* at 20 n.6.)

³ The parties can exclude from settlement or voluntary mediation any claims they choose. In case evaluation, the parties can exclude claims by stipulation or motion. MCR 2.403(A)(3). Claims excluded from case evaluation are not encompassed by the case evaluation award or any order or judgment entered on that award. MCR 2.403(M)(2).

foists upon the patient both the burden of negotiating with the provider and (potentially) additional litigation expenses. This is not the prompt, adequate, and assured compensation from no-fault insurers that the no-fault act requires and for which the insured pays premiums.

State Farm also claims that it does not know which court has “jurisdiction” to issue an apportionment order when suits are pending in more than one court. (State Farm Br., p. 11.) But this argument ignores the plain language of MCL 500.3112, which clearly gives “the circuit court” jurisdiction to enter an apportionment order. Thus, if the patient’s claim is in circuit court and a provider’s claim is in district court, the apportionment motion should be filed in the circuit court.

If State Farm is complaining about cases where the patient and the provider have each filed suit in circuit courts in different counties, then this issue is no different than any other litigation where the parties file concurrent circuit court lawsuits in different counties (e.g., the insurer files a declaratory action in one county and the patient or provider brings an action in a different county). These cases can be resolved, as they are now, by motions to transfer, motions to intervene, and/or motions to consolidate. *See Moody v Home Owners Ins Co*, 304 Mich App 415; 849 NW2d 31 (2014)(consolidated patient and provider claims). They can also be resolved by providing to the non-party claimants notice of the apportionment motion/hearing.

State Farm’s claim that the Court of Appeals’ opinion requires an apportionment order in every case is a strawman argument designed to further State Farm’s interest in cutting medical providers out of settlement negotiations so that State Farm can settle first party no-fault claims for less than they are worth. The Court of Appeals’ holding and simple logic demonstrate that State Farm’s alarmist concerns are untrue. State Farm has multiple options to resolve claims without an apportionment order. The fact that State Farm does not like those options because

they force State Farm to negotiate in good faith with medical providers does not mean that the Court of Appeals' ruling was erroneous.

B. State Farm cannot circumvent MCL 500.3112 by contract.

Additionally, State Farm contends that MCL 500.3112 does not apply here because the release, not the statute, discharges State Farm's liability to Covenant. But State Farm cannot circumvent MCL 500.3112 by contract. If a payment and release could discharge a claim without regard to when the insurer received notice of the claim, then the "unless" clause of MCL 500.3112 would be rendered nugatory. Under §3112's "unless" clause, the effect of an insurer's payment to its insured depends on whether the insurer received notice of a third party's claim before making the payment. But under State Farm's theory, the effect of an insurer's payment would be governed solely by contract—as if MCL 500.3112 did not exist. State Farm admits this. (State Farm's Br., p. 17)("[T]he second sentence of Section 3112 is irrelevant when a release is involved.") This result violates the rule of statutory construction that "a court should presume that every word has some meaning and should avoid any construction that would render any part of a statute surplusage or nugatory." *City of Royal Oak v Se Oakland Cnty Res Recovery Auth*, 257 Mich App 639, 642; 669 NW2d 322 (2003).

The example on page 15 of State Farm's brief demonstrates how State Farm's position attempts to circumvent MCL 500.3112. In that example, State Farm admits that an insurer's liability to Dependent Y is not discharged by paying no-fault benefits to Dependent X after the insurer has received notice in writing of Dependent Y's claim to those same no-fault benefits. But under State Farm's position, the insurer could discharge its liability to Dependent Y merely by having Depending X sign a release in exchange for the insurer's payment. In other words, State Farm is attempting to accomplish by contract exactly what MCL 500.3112 prohibits. State Farm is attempting to discharge a third party's claim by paying only the insured

and without giving notice to the affected third party. As the Court of Appeals correctly recognized, the statute’s plain language prohibits this. (COA Opinion, p. 2.)

Additionally, even if State Farm were correct that it could circumvent MCL 500.3112 by contract, the release in this case does not do so. On the contrary, the release contemplates that medical providers—including Covenant—*could bring no-fault claims against State Farm* and that Mr. Stockford would indemnify State Farm for those claims:

[T]he undersigned agrees to indemnify, defend and hold harmless State Farm Mutual Automobile Insurance Company from any liens or demands made by any provider . . . including . . . Saginaw Covenant Medical Center . . . for payment made or services rendered to Jack H. Stockford in connection with any injuries resulting from the above described accident. [(Ex. 2, p. 3.)]

This language shows that State Farm and Mr. Stockford contemplated that medical providers, including Covenant, could bring claims for no-fault benefits against State Farm. Accordingly, even if State Farm could circumvent MCL 500.3112 by contract, the release here does not do so.

In support of its position that it can circumvent MCL 500.3112 by contract, State Farm cites three cases, all of which are inapposite. In *Michigan Head & Spine Institute, P.C. v State Farm*, 299 Mich App 442; 830 NW2d 781 (2013) the issue was “whether an insured’s release bars a health care provider’s claim for payment of medical services rendered to the insured *after* the release was executed.” *Id* (emphasis added). The Court of Appeals correctly distinguished *Michigan Head & Spine* because that case did not consider the issue presented here: whether the payment or release bars Covenant’s claim when the treatment was rendered, and State Farm received notice in writing of Covenant’s claims, *before* Mr. Stockford and State Farm entered into the payment and release. (COA Opinion, p. 3.) This issue is controlled by the “unless” clause of MCL 500.3112, whereas the issue presented in *Michigan Head & Spine* is not.

Because *Michigan Head & Spine* dealt with a payment and release that discharged *future* claims, it is not inconsistent with the Court of Appeals' ruling in this case. *Michigan Head & Spine* addresses the first situation contemplated by MCL 500.3112: the insurer receives notice in writing of another's claim *after* the payment and release. The Court of Appeals' ruling in this case addresses the second situation contemplated by MCL 500.3112: the insurer receives notice in writing of another's claim *before* the payment and release. The two rulings are consistent with MCL 500.3112 and do not contradict each other.

Moody v Home Owners Ins Co, 304 Mich App 415; 849 NW2d 31 (2014) is also inapposite. *Moody* does not deal with a payment or release. Rather, each of the consolidated cases in *Moody* "concerns the jurisdiction of the district court under MCL 600.8301(1) when a plaintiff presents evidence and arguments far in excess of the district court's \$25,000 amount-in-controversy jurisdictional limit." *Id* at 419; *see also id* at 426 ("The central issue in all three appeals pertains to the application of MCL 600.8301(1)") On this jurisdictional issue, the court held that "consolidation for trial resulted in merging the claims [Moody's claims and the provider's claims] for purpose of determining the amount in controversy under MCL 600.8301(1)." *Id* at 443.

Any comments that *Moody* made regarding the effect of a patient's release are not necessary to the holding and are dicta. Moreover, those comments do not consider the timing of the release and payment, as required by MCL 500.3112. *Moody* does not address the issue here.

State Farm's reliance on *Miller v Citizens Ins Co*, 490 Mich 904; 804 NW2d 740 (2011) is also misplaced. As State Farm admits, the issue in *Miller* was whether a patient's attorney could take a fee from the amount recovered for a medical provider's bill when the provider did not bring its own lawsuit or intervene in the patient's lawsuit. (State Farm's Br., p

18.) This Court stated that MCL 500.3112 does not apply to that issue because the statute “does not encompass an award of attorney fees to an insured’s counsel.” *Id.* *Miller* does not address the impact of a payment or release under MCL 500.3112.

To the extent that *Miller* applies, it supports Covenant’s position and the Court of Appeals’ holding. In *Miller*, this Court held that the settlement between the patient and the no-fault insurer ***did not—indeed, could not—extinguish the provider’s claims:***

No-fault benefits are “payable to or for the benefit of an injured person” MCL 500.3112. In this case, through settlement, the benefits were paid to plaintiff, and her attorney asserted an attorney’s charging lien over the settlement proceeds. Thus, the effect of this [settlement] was ***only to settle claims as between the insurer, plaintiff, and her attorney.*** The circuit court’s order of dismissal pursuant to the settlement agreement did not have the effect of extinguishing the DMC’s right to collect the remainder of its bill from plaintiff. Such a result could not have been achieved without an explicit waiver, or at least unequivocal acquiescence, by the DMC, which was not obtained. [(Emphasis added.)]

MCL 500.3112 plainly provides that a payment does not discharge an insurer’s liability for a claim when the insurer has written notice of the claim before making the payment. As the Court of Appeals correctly held, this language controls. State Farm cannot circumvent MCL 500.3112’s plain language by contract.

C. Covenant’s claim is the claim of “some other person” because Covenant is an independent claimant under the no-fault act.

Finally, State Farm contends that MCL 500.3112 does not apply because Covenant’s claim is not the claim of “some other person.” (State Farm Br., p. 20.) But State Farm did not raise this argument below, so State Farm waived it. *Walters, supra.* State Farm has also waived this argument because it ***admitted in the trial court*** that providers have a “direct right of reimbursement.” (Ex. 3, p. 5:12-17.) The position that State Farm now takes directly contradicts its position in the trial court.

State Farm's contention that a medical provider's claim is the same as the insured's claim also fails because medical providers, like Covenant, are independent claimants under the No-Fault Act. The Court of Appeals addressed this issue in *Wyo. Chiropractic Health Clinic, PC v Auto-Owners Ins. Co.*, 308 Mich App 389; 864 NW2d 598 (2014). After reviewing more than a decade of precedent supporting medical providers' status as independent claimants, the court held:

Based on the above, we find that Wyoming Chiropractic had standing to bring a cause of action against Auto-Owners for PIP benefits under the no-fault act. This Court established in *Munson* that ***a healthcare provider has the "right to be paid for the injured's no-fault medical expenses."*** This Court further explained in *Lakeland Neurocare* that when a healthcare provider submits a claim for payment under the no-fault act, the healthcare provider submits the claim "for the benefit of" the insured. The fact that a healthcare provider submits a claim on behalf of an insured individual allows a healthcare provider to sue to enforce the penalty provisions of the no-fault act. Thus, by implication, a healthcare provider may also bring an action for PIP benefits "for the benefit of" an insured individual. Finally, this Court clarified that its decision in *Lakeland Neurocare* held that ***a healthcare provider has a direct cause of action to sue an insurer for PIP benefits under the no-fault act. Therefore, Wyoming Chiropractic may bring a claim against Auto-Owners for PIP benefits under the no-fault act.*** [*Id* at 396-97 (emphasis added and citation omitted).]

On May 28, 2015, this Court denied the insurer's application for leave to appeal in *Wyoming Chiropractic*, holding that the Court was "not persuaded that the question presented [medical provider claimant status] should be reviewed by this Court." *Wyo Chiropractic Health Clinic, PC v Auto-Owners Ins Co*, 497 Mich 1029; 863 NW2d 54 (2015).⁴ Accordingly, *Wyoming Chiropractic's* holding, that providers are independent claimants under the No-Fault

⁴ In footnote 12 of its Brief, State Farm contends that *Wyoming Chiropractic* was wrongly decided. The arguments that State Farm makes in its footnote are the same arguments that the Court of Appeals rejected and this Court declined to review. *Wyoming Chiropractic* is good law and is binding on the Court of Appeals and trial court.

act, is binding precedent. As independent claimants with a direct right of reimbursement from insurers, medical providers' claims are the claims of "some other person" under MCL 500.3112.

State Farm contends that a medical provider's standing to bring an independent lawsuit does not mean that its claims are the claims of "some other person." But this argument is illogical. If a medical provider's claim were the same as the patient's claim, then the medical provider could not bring its own lawsuit simultaneously with the patient's lawsuit. The insurer could seek summary disposition on the provider's lawsuit per MCR 2.116(C)(6), which provides for dismissal when "[a]nother action has been initiated between the same parties involving the same claim." The fact that, under *Wyoming Chiropractic*, a medical provider can bring its own lawsuit for PIP benefits simultaneously with the insured's lawsuit shows that the provider's claim is the "claim of some other person" under MCL 500.3112.

Additionally, State Farm's position eviscerates medical providers' status as claimants under the no-fault act, contrary to *Wyoming Chiropractic, supra*; *Lakeland Neurocare Centers v State Farm Mut Auto Ins Co*, 250 Mich App 35, 41; 645 NW2d 59, 63 (2002) and *Regents of Univ of Michigan v State Farm Mut Ins Co*, 250 Mich App 719, 733; 650 NW2d 129, 137 (2002). Taken to its logical conclusion, State Farm's position allows a no-fault insurer to stop a provider's claim by paying its insured pennies on the dollar and obtaining a broad release—after the insurer received notice in writing of the provider's claim and without consulting the provider. This result contradicts decades of case law and State Farm's own admission in the trial court.

The three cases on which State Farm relies are inapposite. Both *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 423; 864 NW2d 609 (2014) and *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39, 43; 795 NW2d 229 (2010) deal with fraud, not the timing of

notice in writing in relation to an insurer's payment to its insured. Similarly, *Moody, supra*, dealt with the amount in controversy for purposes of district court jurisdiction, not notice in writing and payment. Fraud and jurisdictional issues do not trigger MCL 500.3112, whereas a payment and notice in writing do.

Additionally, State Farm's broad reading of *Bahri, TBCI, Moody* would render MCL 500.3112 nugatory. If a patient can discharge a provider's claim at any time through a payment or release, as State Farm contends, then it does not matter whether or when the insurer receives notice of the provider's claim. But under the MCL 500.3112's "unless" clause, the timing of the notice is dispositive of whether an insurer's payment discharges the provider's claim. If the insurer receives notice before payment, then the payment does not discharge the provider's claim. If the insurer receives notice after payment, then the payment does discharge the provider's claim. The Court of Appeals correctly recognized this. (COA Opinion, p. 3.)⁵ State Farm's reading of *Bahri, TBCI, Moody* obliterates this statutory distinction. Michigan's rules of statutory construction prohibit this result. *City of Royal Oak, supra*. As an independent claimant under the no-fault act, Covenant's claim is "the claim of some other person" under MCL 500.3112.

D. State Farm cannot unilaterally choose to whom it pays benefits when faced with competing claims from different claimants.

State Farm also claims that the term "or" in MCL 500.3112 means that State Farm can choose whether it pays benefits to the insured or to the provider. Again, State Farm failed to raise this issue below, so State Farm waived it. *Walters, supra*.

⁵ "[W]hile a provider's right to payment from the insurer is created by the right of the insured to benefits, an insured's agreement to release the insurer in exchange for a settlement does not release the insurer as to the provider's noticed claims unless the insurer complies with MCL 500.3112."

Additionally, State Farm's argument reads the second and third sentences out of the statute. As State Farm admits, the language "payable to or for the benefit of an injured person" means that PIP benefits can be paid to either the insured or the provider. If only one or the other asserts a claim to the benefit at issue (e.g. payment for medical treatment), then only the first sentence of MCL 500.3112 is triggered and the insurer can pay that party.

But if both the insured and the medical provider assert a claim to the benefit and the insurer receives notice in writing of the provider's claim before paying its insured, then the second and third sentences of MCL 500.3112 are triggered. In this circumstance, the insurer cannot unilaterally choose to pay the insured and cut the medical provider out of the process. Rather, the insurer must carve out the disputed claim, negotiate a resolution with both the provider and the insured, or apply to the circuit court for an apportionment order.

State Farm's position would stop the analysis after the first sentence of MCL 500.3112, regardless of whether the insurer receives notice in writing of the provider's claim before paying its insured. But this reading renders the second and third sentences of the statute nugatory. In contrast, the Court of Appeals' ruling correctly gives effect to the entire statute.

In attempt to avoid this result, State Farm contends that the second sentence of MCL 500.3112 applies only to survivor's loss benefits. But the language of the statute belies this contention. The second sentence of MCL 500.3112 plainly reads: "Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person." *Id* (emphasis added). The statute does not read, "Payment by an insurer in good faith of survivor's loss benefits" Survivor's loss benefits are a subset of personal protection insurance benefits. *See*

MCL 500.3108(1) (defining survivor's loss benefits). If the legislature had meant to limit the second sentence of MCL 500.3112 to survivor's loss benefits, it would have done so. Instead, the legislature plainly drafted that sentence to apply to all "personal protection insurance benefits." State Farm is attempting simultaneously to ignore the clear language of MCL 500.3112 and also to read into the statute words that are not there. Again, Michigan's rules of statutory construction prohibit this result.

The plain language of MCL 500.3112 provides that when faced with competing claims for no-fault benefits, an insurer may not unilaterally chose which claimant to pay and which to cut out of the payment process. Rather, the insurer must carve-out the claim, negotiate a resolution with the competing claimants, or seek an apportionment order from the circuit court, as the statute allows. The Court of Appeals' holding applying MCL 500.3112 in this manner to this case comports with the plain language of the statute and was correct.

III. THE COURT OF APPEALS RULING IS NOT INCONSISTENT WITH ITS OTHER DECISIONS.

Relying on the same arguments discussed above, State Farm contends that the Court of Appeals' ruling conflicts with *Bahri*, *TBCI*, *Moody*, and *Michigan Head & Spine*. But as explained above, these cases are inapposite because they do not deal with the issue presented here: whether the release or payment between State Farm and Mr. Stockford bars Covenant's claim when the treatment was rendered, and State Farm received notice in writing of Covenant's claims, before executing the release. MCL 500.3112 and the Court of Appeals' opinion do address this issue.

The Court of Appeals' decision is not inconsistent with its prior rulings, which address different issues. *Bahri* and *TBCI* address fraud, not a release or payment, and the Court of Appeals decision in this case does not address fraud. *Moody* addresses amounts in

controversy for purposes of subject matter jurisdiction, and the Court of Appeals decision here does not address jurisdiction. And *Michigan Head & Spine* addresses the impact of a payment and release entered into by the patient and insurer *before* the insurer received notice in writing of the provider's claim. In contrast, the decision here addresses the impact of a payment and release entered into by the patient and insurer *after* the insurer received notice in writing of the provider's claim. The Court of Appeals' ruling is consistent with MCL 500.3112 and is not inconsistent with its prior rulings, which address different issues.

IV. THE COURT OF APPEALS' RULING WILL NOT CAUSE STATE FARM'S PARADE OF HORRIBLES; RATHER, IT FOLLOWS THE PLAIN LANGUAGE OF MCL 500.3112, FURTHERS THE PURPOSES OF THE NO-FAULT ACT, AND ENCOURAGES COMPLETE SETTLEMENTS.

In an attempt to argue that the issue in this case involves significant legal principles of major significance to the state's jurisprudence, State Farm lists alarmist consequences that it claims will follow from the Court of Appeals' ruling. But the ruling will not cause State Farm's parade of horrors. The ruling has no impact on cases where the insurer had not received notice in writing of a provider's claim before entering into a payment or release. For cases where the insurer has received notice in writing, the insurer has several reasonable options. An apportionment order is *one* of those options, but there are others. The insurer can carve the provider's claim out of the settlement with the insured and resolve it separately. The insurer can negotiate with the provider and the insured to reach a global settlement. Or the insured's attorney can seek authority from the provider to negotiate the provider's noticed claim with the insurer. This has been the law since 1973 when the No-Fault Act took effect. The fact that the Court of Appeals has now expressly held that State Farm cannot cut providers out of settlements with impunity does not mean that the sky is falling.

To the contrary, the Court of Appeals' ruling furthers the purpose of the No-Fault Act. As State Farm admits, the Act's purpose is to provide "assured, adequate, and prompt compensation for certain economic losses." *Tinnin v Farmers Ins Co*, 287 Mich App 511, 515; 791 NW2d 747 (2010); (State Farm Br., p 5). MCL 500.3112 effectuates this purpose by allowing medical providers to maintain direct causes of action against insurers to recover PIP benefits. *Wyo. Chiropractic, supra* at 401. Allowing healthcare providers to bring separate causes of action expedites payment to the healthcare provider when the payment is in dispute. This meets the goal of prompt reparation. *Id.* By holding that the insurer cannot extinguish the healthcare provider's noticed claim without the notifying the provider, the Court of Appeals affirmed the provider's claimant status, which expedites payment to the provider and furthers the goal of prompt reparation.

The Court of Appeals' ruling also encourages full, complete settlements. The statute's "unless" clause incentivizes insurers to resolve all claims known to the insurer. If the insurer has notice of a claim, but fails to address it when negotiating a settlement and issuing payment, then the insurer is still liable for the claim. But if the insurer addresses all known claims during settlement, then it ensures that its payment discharges its *and its insured's* liability. This promotes efficient, complete resolution of no-fault claims, which is consistent with the no-fault act's goal to provide adequate and assured compensation. *Tinnin, supra*.

CONCLUSION

The sky is not falling. MCL 500.3112 has read the same since 1973: payment of no-fault benefits by an insurer to its insured discharges the insurer's liability to the extent of the payment, "unless the insurer has been notified in writing of the claim of some other person." As the Court of Appeals correctly held, this language means that when an insurer has received notice in writing of a medical provider's claim before entering into a payment or release with its

insured, the payment or release does not discharge the provider's claim. This holding is consistent with the plain language of the statute, the Court of Appeals' prior decisions, and the purpose of the No-Fault Act. State Farm's application for leave to appeal should be denied.

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