



Court of Appeals: *Dunn* Controls Unless Michigan Supreme Court Rules Otherwise

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The Court of Appeals has held in an unpublished opinion that a no-fault insurer was not required to reimburse its insured for medical expenses the insured repaid to his health care insurer out of the proceeds of a tort settlement. The Court of Appeals urged the Michigan Supreme Court to take up the issue. *Hill v Citizens Ins. Co.*, (10-2-2012); Docket No. 304700; 2012 WL 4512571.

Arthur Hill purchased no-fault insurance including uninsured motorist (UM) coverage from Citizens Insurance Company. Hill also had ERISA coverage through his employer (ArvinMeritor) and elected to coordinate his auto insurance with his health insurance.

Hill was injured in a car accident, and ArvinMeritor paid \$375,000 in medical benefits. When Hill settled a UM claim for \$500,000, ArvinMeritor sought to be reimbursed from the settlement. When Hill in turn asked Citizens to pay him back for anything he paid ArvinMentor, Citizens declined and Hill brought suit. The trial court granted summary disposition in favor of Citizens and Hill appealed.

The Court of Appeals affirmed, recognizing that the matter was controlled by *Dunn v Detroit Auto Inter-Ins Esch*, 254 Mich App 256, 657 NW2d 153 (2002), which held under similar circumstances that the no-fault carrier was not required to reimburse the plaintiff. The *Dunn* court reasoned that where an insured chooses to save money by coordinating his no-fault insurance with his health insurance, he should not enjoy both the savings of the lower no-fault premiums and the equivalent of broader coverage. Most importantly, the *Dunn* Court found it illogical to hold the no-fault insurer liable for a risk that it did not assume.

The Court of Appeals explicitly stated that it would have preferred to follow the reasoning of *Shields v Gov't Employees Hosp Ass'n Inc*, 450 F3d 643 (CA 6, 2006) which came to the opposite result, and urged the Michigan Supreme Court to evaluate the issue if Hill applies for leave to appeal.

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It is unknown whether an application for leave to appeal to the Michigan Supreme Court will be filed.
