

# no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## Non-Party “Underinsured Motorist” Insurer Not Liable For Judgment To Which It Did Not Agree

In *Dawson v Farm Bureau Ins Co*, \_ Mich App \_ (2011), the Michigan Court of Appeals agreed with the insurer that its unambiguous “underinsured motorist” contract language must be enforced as written. Therefore, it was not bound by a judgment against the “negligent driver” to which it did not agree. Additionally, the insurer was not collaterally estopped from raising any contractual or third-party defenses because it had not been a party to the litigation against the driver.

Plaintiff was a passenger in a vehicle operated by Ms. Olinger. He sustained injuries when he was ejected from a vehicle after it had crashed into a bridge abutment. Ms. Olinger carried the minimum liability limits of \$20,000. Plaintiff asked Farm Bureau to approve a \$20,000 settlement with Ms. Olinger and her insurer, and Farm Bureau declined.

In Plaintiff’s third-party suit, Ms. Olinger did not vigorously contest the issues of negligence or serious impairment. Indeed, Ms. Olinger stipulated to damages in the amount of \$100,000. Plaintiff then filed this direct action against Farm Bureau for underinsured benefits. The Tuscola Circuit Court granted summary disposition in favor of Plaintiff. It held that Farm Bureau was estopped from re-litigating liability or damages and was obligated to pay Plaintiff \$80,000.

The Court of Appeals reversed, noting that underinsured motorist coverage is not mandated by the No-Fault Act. Underinsured benefits are purely contractual and the policy language itself dictates the circumstances under which benefits will (or will not) be awarded. The policy unambiguously stated that Farm Bureau “will not be bound by any judgments for damages or settlements made without [Farm Bureau’s] written consent.” The Court held that the language was controlling in spite of the fact that Plaintiff requested that Farm Bureau give its consent to a settlement and that consent had been refused.

### SECRET WARDLE NOTES:

Uninsured and underinsured coverages are not mandated by the No-Fault Act. *Dawson* reinforces the rule that underinsured coverage is governed exclusively by the insurance contract language. With appropriate contract language, an insurer can avoid being bound by judgments to which it was not a party.

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## 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 SE, Ste. 209, Grand Rapids, MI 49546  
Tel: 616-285-0143 Fax: 616-285-0145

[www.secrestwardle.com](http://www.secrestwardle.com)

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## CONTRIBUTORS

### Motor Vehicle Litigation Practice Group Chairs

Thomas J. Azoni  
John H. Cowley, Jr.

### Editor

Bonny Craft

We welcome your questions and comments.

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