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Contract Language Improperly Shifting Order of No-Fault Priority Does not Relieve Duty of Plaintiff/ Claimant to Give Notice to Correct Insurer Within one Year

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The Michigan Court of Appeals recently held in *Fuller v Geico Indem Co*, Docket No. 319655 (March 5, 2015), that the plaintiffs' mistaken belief that no-fault benefits were due from the incorrect insurer did not preserve her claim against the appropriate insurer after one year.

In *Fuller*, nonparty Sandra House rented a vehicle from Lakeside Car Rental and allowed her friend, the co-the plaintiff, Greg Fuller, to drive the vehicle with the other co-the plaintiff, Patricia Fuller, riding as a passenger. The plaintiffs were subsequently involved in a motor vehicle accident.

The plaintiffs did not have their own insurance or any available from a household relative and sought PIP benefits from GEICO through a policy that House had purchased for her personal vehicle. Notably, the rental agreement House entered with Lakeside was for one week and provided that House's GEICO policy would be "first in priority in payment of any and all personal injury and property damage claims that arise from the [use]" of the vehicle. The trial court dismissed the plaintiffs' action against GEICO, holding that the renter, as the owner of the vehicle, was first in priority in the absence of a 3114(1) insurer.

Despite seemingly clear legal issues, the Fullers appealed the suit against GEICO to the Michigan Court of Appeals which affirmed the trial court ruling. The appellate court noted that under Michigan law, statutory priority cannot be shifted via contract by the insured and that such agreements violate the no-fault act and are void. Relying on *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25 (1996), the court stated that the no-fault act requires car owners to be primarily responsible for coverage on their vehicles and a rental driver "cannot defeat the provisions of the no-fault act" by excusing the vehicle's actual owner (the rental company) from providing insurance.

Notably, the appellate court found that the plaintiffs identified the wrong insurer and also failed to give notice to Lakeside's insurer within one year, pursuant to MCL 500.3145(1) and, therefore, would be left without a remedy. The court rejected the plaintiffs' argument that GEICO was equitably estopped from denying coverage because a letter was previously sent by GEICO asking for additional documents to determine whether the Fullers "will be eligible." The appellate court noted the letter clearly indicated that an ongoing investigation was being undertaken with respect to the plaintiffs' claims which suggested that coverage had not been determined. In addition, the court noted that the plaintiffs filed suit against GEICO on Oct. 24, 2012, less than one year from the date of the accident on Nov. 11, 2011, and at that time should have included the insurer of Lakeside in the suit.

While insureds may not contract to shift the order of no-fault priority, it is still the duty of the claimant and/or the plaintiff to identify and notify the correct insurer within one year of the motor vehicle accident.

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